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Gun Control Legislation in the 113th Congress

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Summary

Congress has debated the efficacy and constitutionality of federal regulation of firearms and ammunition, with strong advocates arguing for and against greater gun control. The mass shooting in Newtown, CT, along with other mass shootings in Aurora, CO, and Tucson, AZ, restarted the national gun control debate. The Senate had considered a range of legislative proposals, including several that President Barack Obama supports as part of his national gun violence reduction plan. The most salient of these proposals would (1) require background checks for intrastate firearms transfers between unlicensed persons at gun shows and nearly any other venue, otherwise known as the "universal background checks" proposal; (2) increase penalties for gun trafficking; and (3) reinstate and strengthen an expired federal ban on detachable ammunition magazines of over 10-round capacity and certain "military style" firearms commonly described as "semiautomatic assault weapons," which are designed to accept such magazines.

On March 21, 2013, Senator Harry Reid introduced the Safe Communities, Safe Schools Act of 2013 (S. 649). As introduced, this bill included the language of several bills previously reported by the Senate Committee on the Judiciary: (1) the Stop Illegal Trafficking in Firearms Act of 2013 (S. 54), (2) the Fix Gun Checks Act of 2013 (S. 374), and (3) the School Safety Enhancements Act of 2013 (S. 146). However, the Assault Weapons Ban of 2013 (S. 150) was not included in S. 649. From April 17-18, 2013, the Senate considered S. 649 and nine amendments that addressed a wide array of gun control issues, ranging from restricting assault weapons to mandating interstate recognition (reciprocity) of state handgun concealed carry laws. By unanimous consent, the Senate agreed that adoption of these amendments would require a 60-vote threshold. However, all but two of these amendments were rejected. But, a final vote was not taken on S. 649.

While the House has yet to consider any of the gun control proposals debated in the Senate, on May 8, 2013, the House Committee on Veterans' Affairs approved a bill, the Veterans 2nd Amendment Protection Act (H.R. 602), that addresses veterans, mental incompetency, and firearms eligibility. This bill would narrow the grounds by which beneficiaries of veterans' disability compensation or pensions are determined to be ineligible to receive, possess, ship, or transfer a firearm or ammunition because a fiduciary has been appointed on their behalf. The Senate Committee on Veterans' Affairs approved a nearly identical bill (S. 572) on September 4, 2013. In addition, in December 2013, Congress approved a 10-year extension of the Undetectable Firearms Act of 1988 (H.R. 3626; P.L. 113-57).

In July 2014, the Senate considered the Bipartisan Sportsmen's Act of 2014 (S. 2363) that included several provisions intended to promote hunting, fishing, and recreational shooting. Supporters of gun rights or gun control filed a score of amendments. When a cloture motion was defeated on July 10, 2014, the Senate leadership postponed further consideration of S. 2363. The House Committee on Appropriations approved an FY2015 Interior appropriations measure (yet to be filed) on July 9, 2014, that includes provisions which are similar, but not identical, to those included in S. 2363. The House passed an FY2015 Energy and Water Development Appropriations bill (H.R. 4923) on July 10, 2014, that includes a provision that addresses civilian carry of firearms on public properties managed by the Army Corps of Engineers. The Senate has passed a companion bill (S. 1245), but it does not include a similar provision. In addition, the House amended and passed an FY2015 District of Columbia appropriations bill (H.R. 5016) on July 16, 2014, with a provision that would prohibit the use of any funding provided under that bill from being used to enforce certain District gun control statutes.

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Developments in the 113th Congress

Like the 112th Congress before it, the 113th Congress has been left to consider whether gun control legislation would be an appropriate policy response to Newtown, CT, and similar "mass shooting" incidents. As described below, the Senate considered such legislation in April 2013, but it was not passed, while similar legislation has not seen the same level of action in the House of Representatives. In both chambers, Committees on Veterans' Affairs have reported legislation that addresses the issue of veterans, mental incompetency, and firearms eligibility in July and September 2013. Congress also extended a ban on undetectable firearms for 10 years in December 2013. In addition, in July 2014, the House passed several amendments to appropriations bills, which are arguably supported by many gun rights advocates, while the Senate leadership tabled a bill, rather than consider a wide-range of firearms-related amendments.

Newtown and Subsequent Executive and Legislative Action

On December 14, 2012, in Newtown, CT, a 20-year-old male entered Sandy Hook Elementary School and shot 20 first graders and 6 adult staff members to death. He allegedly also shot his mother to death. According to press accounts, the firearms he used in the shooting included a 5.56mm Bushmaster (M16-style) semiautomatic rifle, and two semiautomatic pistols, a 10mm Glock and 9mm Sig Sauer.[1] These firearms were reportedly owned legally by his mother, and were registered under Connecticut state law.[2] When first responders entered the building, the gunman, who reportedly suffered from profound mental incapacity, shot himself to death with the 10mm Glock pistol.[3] According to a Connecticut State Medical Examiner, the shooter mostly used the Bushmaster rifle, reloading it with detachable 30-round magazines several times, to murder the children and staff at Sandy Hook.[4] "Dozens and dozens" of spent 5.56mm cartridges were found at the crime scene, along with additional, unused magazines filled with ammunition.[5]

Executive Branch Action

In the immediate aftermath of Newtown, on December 20, 2012, President Barack Obama established a Task Force on Gun Violence under the leadership of Vice President Joseph R. Biden. On January 16, 2013, the White House released a document entitled: *Now is the Time: The President's Plan to Protect our Children and our Communities by Reducing Gun Violence*.[6] This

[1] Emily Flitter and Dan Burns, "Connecticut Gunman Had Hundreds of Rounds; Obama to Console Newtown," *Reuters*, December 16, 2012.

[2] Ibid.

[3] Ibid.

[4] Paul Duggan, David A. Fahrenthold, and Steve Vogel, "Obama Speaks at Memorial in Shaken Town," *Washington Post*, December 17, 2012, p. A1 and A11.

[5] Ibid. N.B.: For greater detail on the number of shots fired and other aspects of this incident, see *Report of the State's Attorney for the Judicial District of Danbury on the Shootings at Sandy Hook Elementary School and 36 Yogananda Street, Newtown, Connecticut on December 14, 2012*, November 25, 2013.

[6] White House, *Now Is the Time: The President's Plan to Protect our Children and our Communities by Reducing Gun Violence*, January 16, 2013, http://www.wh.gov/now-is-the-time.

plan included 18 legislative proposals and 23 executive actions.[7] Several of those legislative proposals included the following:

- require background checks for private firearms transfers at gun shows and any other venue, or "universal background checks";
- strengthen and reinstate a ban of semiautomatic assault weapons and magazines of over 10 rounds (cartridges);
- increase penalties for gun trafficking;
- re-examine and strengthen restrictions on armor piercing ammunition;
- Senate confirmation of Minnesota U.S. Attorney B. Todd Jones as Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF);[8] and
- repeal an ATF appropriations rider and strengthen that agency's authority to deny importation permits for 50-year-old military surplus firearms that fall under the regulatory definition of "curio or relic."[9]

Other legislative proposals primarily consist of requests for additional funding to

- maintain 15,000 police officers on the streets of the United States, otherwise known as the COPS (Community Oriented Policy Services) program[10] ($4 billion);
- train state, local, tribal, and territorial law enforcement officers in responding to shootings ($14 million);
- allow the Centers for Disease Control (CDC) to conduct additional research on the possible nexus between video games, media images, and violence ($10 million);
- expand the National Violent Death Reporting System (NVDRS)[11] from 18 to all 50 states;

[7] Ibid.

[8] On July 31, 2013, the Senate confirmed B. Todd Jones as ATF Director.

[9] For FY1996 and every fiscal year after, Congress has included a limitation on the ATF salaries and expenses appropriation that prohibits that agency from changing the regulatory definition of "curios or relics." This provision was in response to an ATF proposal to amend the definition of "curio or relic," because of concerns about the volume of surplus military firearms that could be imported into the United States. ATF has consistently opposed the importation of certain World War II era, surplus military firearms.

[10] For further information on COPS, see CRS Report RL33308, *Community Oriented Policing Services (COPS): Background and Funding*, by Nathan James.

[11] For FY2002, Congress appropriated funding for CDC to establish the NVDRS, a system that has been built upon a pilot program sponsored by private foundations and coordinated by the Harvard School of Public Health's Injury Control Research Center.

> The NVDRS aims to create a comprehensive individual-level data set in each state that links data from medical examiners and coroners, police departments, death certificates, and crime labs on each death—resulting from violence (homicide, suicide, unintentional firearms-related deaths, and undetermined causes).

See National Research Council, *Firearms and Violence: A Critical Review* (Washington, DC: 2005), p. 33.

- improve incentives to encourage states to provide the FBI with prohibiting records on individuals who fall under the definition of "mental defective" ($50 million); and
- improve school security ($230 million).

The Administration's 23 executive actions, under the plan, range from directing the Attorney General to work with U.S. Attorneys to ensure that firearms-related criminal cases are prosecuted to directing the CDC to research the causes and prevention of gun violence.[12]

This report does not focus on the President's plan in its entirety. Rather, this report provides an overview of federal firearms laws as a basis for examining the three most salient legislative proposals included in the President's plan. Those proposals would (1) require background checks for intrastate firearms transfers between unlicensed persons at gun shows and nearly any other venue, otherwise known as the "universal background checks" proposal; (2) increase penalties for gun trafficking; and (3) reinstate and strengthen an expired federal ban on detachable ammunition magazines of over 10-round capacity and certain "military style" firearms commonly described as "semiautomatic assault weapons," which are designed to accept such magazines. This report also briefly examines counter-proposals designed to increase both open and concealed firearms carrying privileges under certain circumstances.

Legislative Branch Action Following Newtown

In response to the Newtown mass shooting, the Senate considered several legislative proposals supported by the Obama Administration that would have required universal background checks for firearms transfers, increased criminal gun trafficking penalties, and restricted certain "military

[12] For FY1997-FY2012, Congress has included a provision in the Departments of Health and Human Services, Labor, and Education appropriations that has prohibited that agency from spending any appropriated funding to "advocate or promote gun control." This rider is known as the "Dickey amendment," for the Member, Representative Jay Dickey, who attempted to redirect $2.6 million away from a CDC firearms injury program during committee markup of the FY1997 Departments of Labor, Health and Human Services (HHS), and Education Appropriations bill (H.R. 3755). Although the Dickey amendment was rebuffed (6-8), the committee chairman, Representative Robert L. Livingston, inserted into the reported bill the following limitation on the CDC salaries and expenses appropriation language: "That none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control." Report language noted further:

> The bill [H.R. 3755] contains a limitation to prohibit the National Center for Injury Prevention and Control at the Centers for Disease for Disease Control from engaging in any activities to advocate or promote gun control. The CDC may need to collect data on the incidence of gun related violence, but the Committee does not believe that it is the role of the CDC to advocate or promote policies to advance gun control initiatives, or to discourage responsible private gun ownership. The Committee expects research in this area to be objective and grants to be awarded through an impartial peer review process. (H.Rept. 104-659, p. 49.)

This limitation was first enacted as part of the Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208; September 30, 1996; 110 Stat. 3009, 3009-244). For FY2012, Congress expanded this limitation so that it applies to all HHS funding in addition CDC in the Consolidated Appropriations Act, 2012 (P.L. 112-74; November 18, 2012; 125 Stat. 786, 1086 (Section 218), 1110 (Subsection501(c)). The Administration's plan maintains that research on the causes of gun violence does not constitute "advocacy," and such research would not be in violation of the Dickey amendment. For further information, see "Current Appropriations Provisions Regarding Domestic Gun Control," CRS Congressional Distribution Memorandum, February 7, 2013. Available upon request.

style" firearms. The Senate debated, but did not pass, this legislation in April 2013. So far, the House has not acted upon similar legislation.

Senate Committee on the Judiciary Action

In alignment with the President's plan, in the Spring 2013, the Senate Committee on the Judiciary approved the following four gun control-related bills:

- Stop Illegal Trafficking in Firearms Act of 2013 (S. 54), on March 7, 2013, to establish standalone straw purchasing and gun trafficking prohibitions and increase related penalties;
- Fix Gun Checks Act of 2013 (S. 374), on March 11, to require background checks for private firearms transfers, and encourage states to provide the Federal Bureau of Investigation (FBI) with greater access to records on prohibited persons for background check purposes; and to authorize additional appropriations of $100 million annually (FY2014-FY2018) for funding grants to states to improve access to firearms-related prohibiting records—especially for persons adjudicated "mentally defective" and persons convicted of misdemeanor crimes of domestic violence;
- School Safety Enhancements Act of 2013 (S. 146), on March 11, to authorize annual appropriations of up to $40 million for the next 10 years for the Secure Our Schools grant program under the Department of Justice (DOJ) Community Oriented Policing Services (COPS); and
- Assault Weapons Ban of 2013 (S. 150), on March 14, to ban permanently the further production or importation of certain semiautomatic firearms, as well as high-capacity magazines.

The votes on universal background checks and assault weapons (S. 374 and S. 150) split down party lines (10-8). Senator Charles E. Grassley, the committee's ranking minority Member, voted for the gun trafficking bill (S. 54), making the vote on that measure 11-7. The school safety bill (S. 146) was approved by a vote of 14-4.

Senate Floor Action

From April 16-18, 2013, the Senate considered the Safe Communities, Safe Schools Act of 2013 (S. 649). As introduced, this bill included the language of S. 54, S. 374, and S. 146, but it did not include S. 150. Nevertheless, Senator Dianne Feinstein offered the language of S. 150, the Assault Weapons Ban of 2013, as an amendment to S. 649. In total, the Senate voted on nine amendments that addressed a wide array of gun control issues. By unanimous consent, the Senate agreed that adoption of these amendments would require a 60-vote threshold. All but two of these amendments were defeated.

- Senators Joe Machin and Patrick Toomey offered an amendment—the Public Safety and Second Amendment Rights Protection Act of 2013 (S.Amdt. 715)—that would have required background checks for intrastate (same state) firearms transfers between unlicensed persons, if the firearms were offered for sale or trade in some form of public fora (from classified ads to Internet sites, or at gun shows). Among other provisions, the amendment included several related to

improving firearms-related background checks and veterans' firearms eligibility and mental incompetency. The amendment was rejected by a yea-nay vote: 54-46 (Record Vote Number: 97).

- Senator Charles Grassley offered a "GOP substitute" amendment—the Protecting Communities and Preserving the Second Amendment Act of 2013 (S.Amdt. 725)—that would have established standalone gun trafficking and straw purchasing offenses. Like the Manchin-Toomey amendment, the GOP substitute also included several provisions to improve background checks and addressed veterans' firearms eligibility and mental incompetency. Furthermore, it would have provided a statutory definition for the term "adjudicated mentally incompetent or committed to a psychiatric hospital." The amendment was rejected by a yea-nay vote: 52-48 (Record Vote Number: 98).
- Senator Patrick Leahy offered an amendment—the Stop Illegal Trafficking in Firearms Act of 2013 (S.Amdt. 713)—that would have established standalone gun trafficking and straw purchasing provisions, which are very similar to those in S. 54, as reported. Nevertheless, the amendment was rejected by a yea-nay vote: 58-42 (Record Vote Number: 99).
- Senator John Cornyn offered an amendment (S.Amdt. 719) that would have required interstate firearms concealed carry reciprocity, that is, it would have mandated that states that issued such permits recognize the validity of permits issued by other states. The amendment was rejected by a yea-nay vote: 57-43 (Record Vote Number: 100).[13]
- Senator Dianne Feinstein offered an amendment (S.Amdt. 711) that would have re-imposed and expanded prior law that restricted certain semiautomatic, military-style firearms commonly referred to as "assault weapons." The amendment was rejected by a yea-nay vote: 40-60 (Record Vote Number: 101).
- Senator Richard Burr offered an amendment (S.Amdt. 720) that would have prohibited the Department of Veterans' Affairs (VA) from referring veterans and other beneficiaries who are found to be "mentally incompetent" for fiduciary purposes to the FBI as persons ineligible to receive, possess, ship, or transfer a firearm without an order or finding of a judge, magistrate, or other judicial authority that they are a danger to themselves or others. The amendment was rejected by a yea-nay vote: 56-44 (Record Vote Number: 102). Similar language was also included in the Manchin-Toomey amendment and the Grassley GOP substitute amendment.
- Senator Richard Blumenthal offered an amendment (S.Amdt. 714) that would have re-imposed and expanded prior law that restricted "large capacity ammunition feeding devices," or magazines of greater than 10-round capacity. The amendment was rejected by a yea-nay vote: 46-54 (Record Vote Number: 103).
- Senator John Barrasso offered an amendment (S.Amdt. 717) that would require a 5% reduction of Community Oriented Policy Services grants to state and local

[13] For further information, see CRS Report R42099, *Federal Laws and Legislation on Carrying Concealed Firearms: An Overview*, by Vivian S. Chu.

governments that release information on gun owners—particularly concealed carry permit holders. The amendment was adopted by a yea-nay vote: 67-30 (Record Vote Number: 104).[14]

- Senator Tom Harkin offered an amendment (S.Amdt. 730) that would expand certain grant programs related to mental health and substance abuse. The amendment was adopted by a yea-nay vote: 95-2 (Record Vote Number: 105).

According to the Senate amendment tracking system, there are an additional 20 amendments to S. 649 filed for possible consideration, but it is not clear whether the Senate will resume consideration of S. 649. For now, the Senate has moved on to other business without taking a final vote on S. 649. This report includes discussion of most, but not all, of the major provisions in these amendments; however, it does not include any discussion of the Harkin amendment and related mental health and substance abuse programs, which arguably fall outside of the scope of "federal gun control."

House and Senate Veterans' Committees Action

While the House has not considered any of the wider gun control proposals, such as universal background checks, debated in the Senate, on May 8, 2013, the House Committee on Veterans' Affairs approved a bill, the Veterans 2nd Amendment Protection Act (H.R. 602), by voice vote. Under H.R. 602,

> a person who is a beneficiary of disability compensation and pension programs administered by the VA, who is mentally incapacitated, deemed mentally incompetent, or experiencing an extended loss of consciousness could not be considered "adjudicated as a mental defective" for the purposes of federal firearms eligibility determinations, without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such person is a danger to himself or herself or others.

Similar language was included in the Manchin-Toomey, Grassley GOP substitute, and Burr amendments, which the Senate considered, but rejected. The House committee reported this bill on July 19, 2013 (H.Rept. 113-159). The Senate Committee on Veterans' Affairs reported a nearly identical measure (S. 572) on September 14, 2013 (S.Rept. 113-86). In the past three Congresses, similar legislation has been considered and passed by either one or both chambers.

Extension of the 1988 Undetectable Firearms Act

The House and Senate passed a 10-year extension of the Undetectable Firearms Act of 1988 (H.R. 3626).[15] President Barack Obama signed the bill into law (P.L. 113-57).[16] This statute makes it unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm that, after the removal of its grips, stocks, or magazines, is not as detectable as a "security exemplar" by a walk-through metal detector. According to congressional sources,

[14] Ibid.

[15] P.L. 100-649, November 10, 1998, 102 Stat. 3816. Congress previously extended the law for five years under P.L. 105-277, October, 21 1998, 112 Stat. 2681-528, and extended it once again for 10 years under P.L. 108-174, December 9, 2003, 117 Stat. 2481. It is codified at 18 U.S.C. §922(p).

[16] P.L. 113-57, December 9, 2013, 127 Stat. 656.

ATF has reportedly produced a security exemplar, which the law requires be made of 3.7 ounces of stainless steel and in a shape resembling a handgun.[17] The law's current expiration date is December 10, 2023.

In 1986, the Office of Technology Assessment (OTA) reported to Congress that producing an undetectable, nearly nonmetallic firearm was not outside of the realm of the possible.[18] OTA also noted that conventional plastics such as polyester or nylon did not have the strength for such a weapon, but such materials could be reinforced with other materials, such as carbon fibers, ceramics, or glass, to name a few.[19] Otherwise, an all-plastic firearm could only be fired several times before the temperatures and pressures produced by fired cartridges would damage the firearm beyond use, possibly blowing up and maiming or killing the shooter. More recently, alarms were raised that 3-D (three dimensional) printer technology[20] could be used to make an "undetectable firearm" more easily. As documented by *Forbes* magazine, one individual built an "undetectable firearm," and posted a blueprint for it on the Internet, with a video demonstrating the making and test-firing of this gun.[21] While federal authorities managed to have the plans removed from a website, they are still reportedly available on Internet file-sharing sites.[22]

Hunting, Fishing, Recreational Shooting, and Firearms Carry on "Public Lands"

The gun rights community supports legislative proposals that would arguably promote hunting, fishing, and recreational shooting on federal public lands, although these proposals are not arguably related to gun control.[23] For example, one provision (§103) included in the Bipartisan Sportsmen's Act of 2014 (S. 2363) would allow greater federal funding for state programs to create shooting ranges, including ranges located on federal lands such as those managed by the Bureau of Land Management (BLM) and the Forest Service (FS). Another section (§107) would address such activities on public lands, including those managed by the BLM and FS, and possibly other agencies. Nevertheless, in recent Congresses, such legislation has been the subject of additional gun control amendments, which generally addressed open and concealed carry of firearms on those public lands by private persons.[24] The 113th Congress has proved no different. When the Senate was poised to consider the Bipartisan Sportsmen's Act of 2014 (S. 2363), at

[17] ATF Office of Congressional Liaison, phone conversation on January 13, 2014.

[18] David J. Hansen, "Congress Moves on Plastic Gun Legislation," *Chemical & Engineering News*, May 16, 1988, pp. 17-18.

[19] Ibid.

[20] *PC Magazine* defines "3-D printing" as "the making of parts and products using a computer-driven, additive process, one layer at a time. 3-D printing builds plastic and metal parts directly from CAD drawings that have been cross sectioned into thousands of layers. It provides a faster and less costly alternative to machining (cutting, turning, grinding, and drilling solid materials)," http://www.pcmag.com/encyclopedia/term/37077/3d-printing.

[21] Andy Greenberg, "Meet the 'Liberator': Test-Firing the World's First Fully 3D-Printed Gun," *Forbes*, May 5, 2013, available at http://www.forbes.com/sites/andygreenberg/2013/05/05/meet-the-liberator-test-firing-the-worlds-first-fully-3d-printed-gun/.

[22] "Our View: Plastic Guns' New Frontier Triggers Need for Control," *USA Today*, December 4, 2013, p. 8A.

[23] For further information, see CRS Report R43629, *Hunting and Fishing: Issues and Legislation in the 113th Congress*, by M. Lynne Corn.

[24] For further information, see CRS Report R42751, *Hunting, Fishing, Recreational Shooting, and Other Wildlife Measures: S. 3525*, coordinated by M. Lynne Corn, and CRS Report R42602, *Firearms at Army Corps Water Resource Projects: Proposed Legislation and Issues for Congress*, by Nicole T. Carter.

least 12 out of 97 filed amendments were clearly related to gun control. These amendments would have addressed a wide range of gun rights/gun control issues and were offered by both supporters of both gun rights and gun control. On July 10, 2014, the Senate leadership chose to invoke cloture on S. 2363, rather than consider those amendments, but the Senate rejected cloture by a yea-nay vote: 41-56 (Record Vote Number: 220).

The House Committee on Appropriations approved an FY2015 Interior Appropriations bill, yet to be filed, on July 9, 2014, that includes provisions that are similar to those originally included in S. 2363. If and when this bill is brought before the House floor, it is unclear whether the House will consider additional gun control amendments.[25] Similarly, on July 10, 2014, the House Committee approved an FY2015 Energy and Water Development Appropriations bill (H.R. 4923) that includes a provision that would prohibit the Army Corps of Engineers from implementing or enforcing regulations to prevent private persons from otherwise legally carrying firearms on Corps-managed property. While the House passed H.R. 4923 with this provision, the Senate-reported bill (S. 1245) does not include a similar provision.[26]

House-Passed Amendment and Post-Heller DC Gun Control Laws

On June 26, 2008, the Supreme Court issued its decision in *District of Columbia v. Heller* on the constitutionality of a DC law that essentially banned handguns for 32 years, among other things. Passed by the DC Council on June 26, 1976, the DC law required that all firearms within the District be registered and all owners be licensed, but it prohibited the registration of handguns after September 24, 1976. In a 5-4 decision, the Supreme Court found the District's handgun ban to be unconstitutional because it violated an individual's right under the Second Amendment to possess a handgun in his home for lawful purposes such as self-defense.[27]

Since the *Heller* decision, the DC Council has passed several laws to either conform to that decision or address other elements of the DC gun control laws. Some Members of Congress find those DC laws to be out of step with the spirit of the *Heller* decision or otherwise objectionable, and have sponsored proposals to block the implementation of those DC laws.[28] Along these lines, Representative Thomas Massie successfully offered an amendment (H.Amdt. 1098) to the FY2015 Financial Services and General Government appropriations bill (H.R. 5016) that would prohibit the use of any funding provided under this bill to enforce any provision of the:

- Firearms Registration Amendment Act of 2008 (D.C. Law 17-372),
- Inoperable Pistol Amendment Act of 2008 (D.C. Law 17-388),
- Firearms Amendment Act of 2012 (D.C. Law 19-170), or

[25] For further information, see CRS Report R43617, *Interior, Environment, and Related Agencies: FY2015 Appropriations Requested by the President*, by Carol Hardy Vincent.

[26] For further information, see CRS Report R43567, *Energy and Water Development: FY2015 Appropriations*, coordinated by Mark Holt.

[27] For further information, see CRS Report R43041, *Fair Debt Collection Practices Act (FDCPA)*, by Margaret Mikyung Lee, and CRS Report R41750, *The Second Amendment: An Overview of District of Columbia v. Heller and McDonald v. City of Chicago*, by Vivian S. Chu.

[28] In the 110th and 111th Congresses, Members of Congress offered amendments to DC voting rights legislation that would have overturned or revised certain provisions of the District's gun control laws. For further information, see CRS Report RL33830, *District of Columbia Voting Representation in Congress: An Analysis of Legislative Proposals*, by Eugene Boyd.

- Administrative Disposition for Weapons Offenses Amendment Act of 2012 (D.C. Law 19-295).

The Massie amendment was adopted on a recorded vote: 241-181 (Roll no. 425). The House passed H.R. 5016 with the Massie amendment (§ 922 of the engrossed bill) on July 16, 2014.[29]

Background on the Federal Regulation of Firearms

Two major federal statutes regulate the commerce in and possession of firearms: the National Firearms Act of 1934 (26 U.S.C. §5801 et seq.) and the Gun Control Act of 1968, as amended (18 U.S.C. Chapter 44, §921 et seq.). Supplementing federal law, many state firearms laws are stricter than federal law. For example, some states require permits to obtain firearms and impose a waiting period for firearms transfers. Other states are less restrictive, but state law cannot preempt federal law. Federal law serves as the minimum standard in the United States.

The National Firearms Act (NFA)

The NFA was originally designed to make it difficult to obtain types of firearms perceived to be especially lethal or to be the chosen weapons of "gangsters," most notably machine guns and short-barreled long guns. This law also regulates firearms, other than pistols and revolvers, which can be concealed on a person (e.g., pen, cane, and belt buckle guns). It taxes all aspects of the manufacture and distribution of such weapons, and it compels the disclosure (through registration with the Attorney General) of the production and distribution system from manufacturer to buyer.

Machine guns—or fully automatic firearms—have been banned from private possession since 1986, except for those legally owned and registered with the Secretary of the Treasury as of May 19, 1986.[30] According to one estimate, as of November 2007, there were approximately 182,600 machine guns available for transfer to civilians in the United States based upon an audit of the ATF-maintained National Firearms Registry and Transfer Record (NFRTR).[31] Under the NFA, a machine gun is defined as:

> any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term also includes the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.[32]

[29] In a related development, on July 26, 2014, the United States District Court for the District of Columbia issued a decision in *Palmer v. District of Columbia* that prohibits DC officials from enforcing certain provisions of DC law that prohibit the carrying of firearms. On July 29, 2014, the District Court issued a 90-day stay on the decision to allow DC officials to implement measures to comply with the decision.

[30] P.L. 99-308, §102(9); 100 Stat. 449, 452-453; codified at 18 U.S.C §922(o)(1).

[31] John Brown, "182,619—Is That All There Is," *Small Arms Review*, vol. 13, no. 9, June 2010, p. 22.

[32] 26 U.S.C. §5845(b).

To deal in NFA firearms, a person is required to be a federally licensed gun dealer (federal firearms licensee, or "FFL") under the Gun Control Act of 1968 (described below) and also be a special occupational taxpayer (SOT) under the NFA. Class I SOTs are importers of NFA firearms; Class II SOTs are manufacturers of NFA firearms; and Class III SOTs are dealers. NFA firearms are often referred to as Class III weapons, for Class III dealers. The NFA imposes a $200 manufacturing tax and a $200 transfer tax each time a firearm is transferred from an unlicensed individual.[33] For non-tax exempt transfers, ATF places a tax stamp on the tax paid transfer document upon the transfer's approval. The transferee may not take possession of the firearm until he holds the approved transfer document. Private persons, who are not otherwise prohibited by law, may acquire an NFA firearm in one of three ways:

- a registered owner of an NFA firearm may apply for ATF approval to transfer the firearm to another person residing in the same state or to a FFL in another state;
- an individual may apply to ATF for approval to make and register an NFA firearm (except machine-gun); or
- an individual may inherit a lawfully registered NFA firearm.

It is a felony to receive, possess, or transfer an unregistered NFA firearm. Such offenses are punishable by a fine of up to $250,000, imprisonment for up to 10 years, and forfeiture of the firearm and any vessel, vehicle, or aircraft used to conceal or convey the firearm.[34] To the extent it can be known, legally registered NFA machine guns are rarely, if ever, used in crime.

The Gun Control Act of 1968 (GCA)

As stated in the GCA, the purpose of federal firearms regulation is to assist federal, state, and local law enforcement in the ongoing effort to reduce crime and violence. In the same act, however, Congress also stated that the intent of the law is not to place any undue or unnecessary burdens on law-abiding citizens in regard to the lawful acquisition, possession, or use of firearms for hunting, trapshooting, target shooting, personal protection, or any other lawful activity. Under the GCA, the term "firearm" means:

> any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (b) the frame or receiver of any such weapon; (c) any firearm muffler or firearm silencer; or (d) destructive device. Such term does not include an antique firearm.[35]

The GCA, as amended, contains the principal federal restrictions on domestic commerce in firearms and ammunition.

The statute requires all persons manufacturing, importing, or selling firearms *as a business* to be federally licensed; prohibits the interstate mail-order sale of all firearms; prohibits interstate sale of handguns generally and sets forth categories of persons to whom firearms or ammunition may

[33] Transfers of NFA-covered firearms incur a tax of $200 except for those classified as "any other weapon," which are taxed at a reduced $5 rate. Certain NFA firearm transfers are tax-exempt. They include transfers to a lawful heir from an estate; transfers between federal firearms licensees, who are also SOTs; and transfers of "unserviceable firearms."

[34] 26 U.S.C §§5861(d) and (j); 26 U.S.C §5872; 49 U.S.C §§781-788.

[35] 18 U.S.C. §921(a)(3).

not be sold, such as persons under a specified age or with criminal records; authorizes the Attorney General to prohibit the importation of non-sporting firearms; requires that dealers maintain records of all commercial gun sales; and establishes special penalties for the use of a firearm in the perpetration of a federal drug trafficking offense or crime of violence.

As amended by the Brady Handgun Violence Prevention Act, 1993 (Brady Act; P.L. 103-159), the GCA requires background checks be completed for all unlicensed persons seeking to obtain firearms from federal firearms licensees. Private transactions between persons "not engaged in the business" are not covered by the recordkeeping or the background check provisions of the GCA. These transactions and other matters such as possession, registration, and the issuance of licenses to firearms owners may be covered by state laws or local ordinances.

Firearms Transfer and Possession Eligibility

Under current law, there are nine classes of persons prohibited from shipping, transporting, receiving, or possessing firearms or ammunition:

- persons convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- fugitives from justice;
- unlawful users or addicts of any controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. §802));
- persons adjudicated as "mental defective" or committed to mental institutions;[36]
- unauthorized immigrants and nonimmigrant visitors (with exceptions in the latter case, which have changed—effective July 9, 2012—as described below);
- persons dishonorably discharged from the U.S. Armed Forces;
- persons who have renounced their U.S. citizenship;
- persons under court-order restraints related to harassing, stalking, or threatening an intimate partner or child of such intimate partner; and
- persons convicted of a misdemeanor crime of domestic violence.[37]

[36] Under 27 C.F.R. Section 478.11, the term "adjudicated as a mental defective" is defined to include

> a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence or a mental illness, incompetency, condition, or disease, (1) is a danger to himself or others, or (2) lacks the mental capacity to manage his own affairs. The term also includes (1) a finding of insanity by a court in a criminal case and (2) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. Sections 850a, 876(b).

This definition was promulgated by an ATF final rule (*Federal Register*, vol. 62, no. 124, June 27, 1997, p. 34634).

It is noteworthy that it is possible for individuals to become eligible after being disqualified under Section 922(g)(4). For example, under the enacted NICS improvement amendments, VA beneficiaries who have been determined to be mental defectives could appeal for administrative relief and possibly have their gun rights restored if they could demonstrate that they were no longer afflicted by a disqualifying condition.

[37] 18 U.S.C. §922(g).

In addition, there is a 10th class of persons prohibited from shipping, transporting, or receiving firearms or ammunition:

- persons under indictment in any court of a crime punishable by imprisonment for a term exceeding one year.[38]

It also unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any of the prohibited persons enumerated above, if the transferor (seller) has reasonable cause to believe that the transferee (buyer) is prohibited from receiving those items.[39]

Age Eligibility

Federal firearms licensees are prohibited from transferring a long gun or long gun ammunition to anyone less than 18 years of age, or a handgun or handgun ammunition to anyone less than 21 years of age.[40] Since 1994, moreover, it has been a federal offense for any unlicensed person to transfer a handgun or handgun ammunition to anyone less than 18 years of age. It has also been illegal for anyone under 18 years of age to possess a handgun or handgun ammunition (there are exceptions to this law related to employment, ranching, farming, target practice, and hunting).[41]

Licensed Dealers and Firearms Transfers

Persons who are federally licensed to be engaged in the business of manufacturing, importing, or selling firearms are known as "federal firearms licensees (FFLs)." Under current law, FFLs may ship, transport, and receive firearms that have moved in interstate and foreign commerce. FFLs are currently required to verify with the FBI through a background check that non-licensed persons are eligible to possess a firearm before subsequently transferring a firearm to them. FFLs must also verify the identity of non-licensed transferees by inspecting a government-issued identity document (e.g., a driver's license).

FFLs may engage in interstate transfers of firearms among themselves without conducting background checks. Licensees may transfer long guns (rifles and shotguns) to out-of-state residents, as long as the transactions are face-to-face and not knowingly in violation of the laws of the state in which the unlicensed transferees reside. FFLs, however, may *not* transfer handguns to unlicensed out-of-state residents.[42] Since 1986, there have been no similar restrictions on the interstate transfer of ammunition. Furthermore, a federal firearms license is not required to sell ammunition; however, such a license is required to either manufacture or import ammunition.

[38] 18 U.S.C. §922(n).

[39] 18 U.S.C. §922(d).

[40] 18 U.S.C. §922(b)(1).

[41] 18 U.S.C. §922(x).

[42] 18 U.S.C. §922(b)(3).

Also, since 1986, FFLs are statutorily authorized to do business temporarily away from their licensed premises, at properly organized gun shows or at events sponsored by any national, state, or local organization devoted to the collection, competitive use, or other sporting use of firearms in the communities that are located in their state, as long as those gun shows and events are held in the state in which their licensed premises are located.[43] In addition, FFLs are statutorily required to submit "multiple sales reports" to the Attorney General if any person purchases two or more handguns within five consecutive business days. As described below, FFLs are required to maintain records on all acquisitions and dispositions of firearms. They are obligated to respond to ATF agents requesting firearms tracing information within 24 hours. Under certain circumstances, ATF agents may inspect, without search warrants, their business premises, inventory, and gun records.

Private Firearms Transfers

Unlicensed persons are generally prohibited from acquiring firearms from out-of-state sources (except for long guns acquired from FFLs under the conditions described above).[44] Unlicensed persons are also prohibited from transferring firearms to anyone who they have reasonable cause to believe are not residents of the state in which the transaction occurs.[45] In addition, since 1986 it has been a federal offense for non-licensees to knowingly transfer a firearm or ammunition to prohibited persons.[46] It is also notable that firearms or ammunition transfers initiated through the Internet are subject to the same federal laws as transfers initiated in any other manner.[47]

National Instant Criminal Background Check System (NICS)

On November 30, 1998, the FBI activated the National Instant Criminal Background Check System (NICS) to facilitate firearms-related background checks, when the permanent provisions of the Brady Act became effective. Through NICS, FFLs conduct background checks on non-licensee applicants for both handgun and long gun transfers.

As part of NICS checks, the system will respond to an FFL or state official with a NICS Transaction Number (NTN) and one of three outcomes: (1) "proceed" with transfer or permit/license issuance, because a prohibiting record was not found; (2) "denied," indicating a prohibiting record was found; or (3) "delayed," indicating that the system produced information that suggested there could be a prohibiting record. Under the last outcome, a firearms transfer may be "delayed" for up to three business days while NICS examiners attempt to ascertain whether the person is prohibited.[48] At the end of the three-day period, an FFL may proceed with the transfer at his discretion if he has not heard from the FBI about the matter. The FBI, meanwhile, will continue to work the NICS adjudication for up to 90 days, during which the transaction is considered to be in an "open" status. If the FBI ascertains that the person is not in a prohibited status at any time during the 90 days, then the FBI will contact the FFL through NICS

[43] 18 U.S.C. §923(j).

[44] 18 U.S.C. §922(a)(3).

[45] 18 U.S.C. §922(a)(5).

[46] 18 U.S.C. §922(d).

[47] For further information, see CRS Report R42687, *Internet Firearm and Ammunition Sales*, by Vivian S. Chu.

[48] Accessing Records in the System, 28 C.F.R. §25.6.

with a proceed response. If the person is subsequently found to be prohibited, the FBI will inform ATF and a firearms retrieval process will be initiated.

Under no circumstances is an FFL informed about the prohibiting factor upon which a denial is based. Under the Brady background check process, however, a denied person may challenge the accuracy of the underlying record(s) upon which his denial is based. He would initiate this process by requesting (usually in writing) the reason for the denial from the agency that conducted the NICS check (the FBI or POC). The denying agency has five business days to respond to the request. Upon receipt of the reason and underlying record for the denial, the denied person may challenge the accuracy of that record. If the record is found to be inaccurate, the denying agency is legally obligated to correct that record.

As with other screening systems, particularly those that are name-based, false positives occur as a result of Brady background checks, but the frequency of these misidentifications is unreported. Nevertheless, the FBI has taken steps to mitigate false positives. In July 2004, DOJ issued a regulation that established the NICS Voluntary Appeal File (VAF), which is part of the NICS Index (described above). DOJ was prompted to establish the VAF to minimize the inconvenience incurred by some prospective firearms transferees (purchasers) who have names or birth dates similar to those of prohibited persons. So as not to be misidentified in the future, these persons agree to authorize the FBI to maintain personally identifying information about them in the VAF as a means to avoid future delayed transfers. Current law requires that NICS records on approved firearm transfers, particularly information personally identifying the transferee, be destroyed within 24 hours.[49]

Under the GCA, there is also a provision that allows the Attorney General (previously, the Secretary of the Treasury) to consider petitions from a prohibited person for "relief from disabilities" and have his firearms transfer and possession eligibility restored.[50] Since FY1993, however, a rider on the ATF annual appropriations for salaries and expenses has prohibited the expenditure of any funding provided under that account on processing such petitions.[51] While a prohibited person arguably could petition the Attorney General, bypassing ATF, such an alternative has never been successfully tested. As a result, the only way a person can reacquire his lost firearms eligibility is to have his civil rights restored or disqualifying criminal record(s) expunged or set aside, or to be pardoned for his crime.

[49] For FY1999 and every year thereafter, Congress has included a provision in the annual CJS appropriations acts that prohibits DOJ from using appropriated funds to levy a fee for NICS firearms-related background checks. This provision was crafted to counter a Clinton Administration proposal to levy a $5 fee for such checks. For FY2004 and every year thereafter, along with the fee prohibition, Congress has included a provision that requires the FBI to destroy background check records on persons who are eligible to receive firearms within 24 hours. This provision was originally part of the FY2004 Tiahrt amendment, known for its sponsor Representative Todd Tiahrt, and was crafted in response to a 90-day audit log that was maintained by the FBI during the Clinton Administration for audit and other purposes. In the Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-55; November 18, 2011; 125 Stat. 552, 632), Congress inserted futurity language ("hereafter") in this provision that appears to make it permanent law.

[50] 18 U.S.C. §925(c). See also Relief from Disabilities Under the Act, 27 C.F.R. §478.144.

[51] For FY1993, see P.L. 102-393; 106 Stat. 1732 (1992). For FY2012, see P.L. 112-55; 125 Stat. 552, 609 (November 18, 2011). The FY2012 limitation provides: "That none of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. 925(c)."

Table 1. Brady Background Checks for Firearms Transfers and Permits

(1998-2010)

Year	Total Annual Checks	Denials	FBI Checks	POC Checks	FBI Denials[a]	POC Denials[b]
1998[c]	893,127	18,647	507,000	386,127	8,836	9,811
1999	8,621,315	204,455	4,538,000	4,083,315	81,000	123,455
2000	7,698,643	153,087	4,260,270	3,438,373	66,808	86,279
2001	7,957,926	150,500	4,291,926	3,666,000	64,500	86,000
2002	7,805,792	135,973	4,248,893	3,556,899	60,739	75,234
2003	7,831,146	126,181	4,462,801	3,368,345	61,170	65,011
2004	8,083,809	125,842	4,685,018	3,398,791	63,675	62,167
2005	8,277,873	131,916	4,952,639	3,325,234	66,705	65,211
2006	8,612,201	134,442	5,262,752	3,349,449	69,930	64,512
2007	8,658,245	135,817	5,136,883	3,521,362	66,817	69,000
2008	9,900,711	147,080	5,813,249	4,087,462	70,725	76,355
2009	10,764,237	150,013	6,083,428	4,680,809	67,324	82,689
2010	10,404,563	152,850	6,037,394	4,367,169	72,659	80,191
Total	105,509,588	1,766,803	60,280,253	45,279,335	820,888	945,915

Source: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, available at http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=13. This table reflects the most current data available to CRS.

Notes: On November 30, 1998, the interim provisions of the Brady Handgun Violence Prevention Act (P.L. 103-159) ended, and the permanent provisions were implemented when the FBI stood up the National Instant Criminal Background Check System (NICS).

a. In non-point of contact (non-POC) states, federal firearms licensees contact the FBI directly to conduct NICS background checks.

b. In point of contact (POC) states, federal firearms licenses contact a state agency and, in turn, the state agency contacts the FBI to conduct NICS background checks.

c. Background checks were essentially only conducted for a month (December) during calendar year 1998.

As shown in **Table 1**, under the permanent provisions of the Brady Act (December 1998 through 2010), more than 105.5 million checks were completed, resulting in nearly 1.8 million denials, for a denial rate of 1.7%. More than 60.3 million of these checks were completed entirely by the FBI for non-point of contact (non-POC) states, the District of Columbia, and four territories. Those checks resulted in a denial rate of 1.4%. Nearly 45.3 million checks were conducted by full or partial point of contact (POC) states. Those checks resulted in a higher denial rate of 2.1%.

Universal Background Checks

As noted above, the President's plan to reduce gun violence includes a legislative proposal to require "universal background checks." Under current law, intrastate transfers between unlicensed persons, who are not "engaged in the business" of dealing in firearms "as a regular course of ... business with the principal objective of livelihood and profit," are not covered by the recordkeeping or the background check provisions of the GCA. Nevertheless, such private

transactions and other matters such as possession, registration, and the issuance of licenses to firearms owners may be covered by state laws or local ordinances.

Proponents of greater gun control view the fact that unlicensed persons engaging in intrastate firearms transfers are not subject to the recordkeeping and background check requirements of the GCA as a "loophole" in the law, particularly within the context of gun shows. This circumstance arguably flowed from two developments. One, in 1986, Congress amended the GCA to allow FFLs to transfer firearms to unlicensed persons at gun shows located within the state of their business;[52] however, prohibitions on interstate transfers still applied. Two, in 1994, Congress passed the "Brady Act" and amended the GCA to require background checks be completed for all unlicensed persons seeking to obtain firearms from FFLs. As described above, in November 1998, the FBI brought NICS online to facilitate firearms background checks whenever an FFL transfers a firearm to an unlicensed person. However, federal law does not require background checks for intrastate (in-state) firearms transfers between unlicensed persons.

In the 113th Congress, several proposals have been introduced that would require background checks for private, intrastate firearms transfers between unlicensed persons at gun shows or any other venue. These proposals would require an unlicensed transferor (seller) to engage the services of an FFL, who would conduct a NICS check on the unlicensed transferee (buyer). FFLs facilitating such transfers would also be required to maintain a record of all transfers in a bound volume, as well as individual transfers on a form prescribed by the Attorney General. For example, Senator Frank Lautenberg and Representative Carolyn McCarthy have introduced similar but separate proposals to require background checks for firearms transfers between unlicensed persons at gun shows (S. 22 and H.R. 141). Representative James P. Moran included a provision that would require background checks for firearms transfers between unlicensed persons at any venue in the NRA Members' Gun Safety Act of 2013 (H.R. 21), as did Representative McCarthy in the Fix Gun Checks Act (H.R. 137).

Senate Committee Markup

On March 11, 2013, the Senate Committee on the Judiciary approved and ordered reported the Fix Gun Checks Act of 2013 (S. 374). This bill too would require background checks for private firearms transfers. It would re-designate 18 U.S.C. Section 922(t), the permanent NICS background check provisions, Section 922(s), and amend Section 922(t) to read:

> Beginning on the date 180 days after the date of enactment of this subsection, it shall be unlawful for any person who is not licensed under this chapter [44; 18 USC §921 et seq.] to transfer a firearm to any person who is not licensed under this chapter, unless a licensed importer, licensed manufacturer, or licensed dealer has first taken possession of the firearm for the purpose of complying with subsection (s). Upon taking possession of the firearm, the licensee shall comply with all requirements of this chapter as if the licensee were transferring the firearm from the licensee's inventory to the unlicensed transferee.

Exceptions are made for bona fide gifts between spouses, parents and their children, siblings, or grandparents and grandchildren; inheritance and similar operations of the law; as well as temporary transfers in the home of a private person, for hunting and sporting purposes, inheritance, and examination and evaluation. The bill would require that the Attorney General, or

[52] 18 U.S.C. §923(j),

his designee, set a maximum fee that a federal firearms licensee could charge for conducting such a background check for "private party" firearms transfers.[53] Private persons who transfer a firearm in violation of this provision would face a fine and possible imprisonment for not more than one year. The language of S. 374 has been included in the Safe Communities, Safe Schools Act of 2013 (S. 649).

Senate Floor Consideration

During consideration of S. 649, the Senate debated and voted upon two amendments that were offered in lieu of the universal background check provisions included in S. 374, as reported, and S. 649, as introduced. Known for their chief sponsors, those amendments included the Manchin-Toomey and Grassley GOP substitute amendments.

Manchin-Toomey Amendment

Senators Manchin and Toomey offered an amendment (S.Amdt. 715) that, among other provisions, included a universal background check requirement. However, under a unanimous consent agreement that required 60 votes for passage, the Senate rejected the amendment by a yea-nay vote: 54-46 (Record Vote Number: 97). Like S. 649 and S. 374, the Manchin-Toomey amendment would have required that intrastate (same state) firearms transfers between unlicensed persons (private transfers) be processed through FFLs and, thus, it would have required a background check on the recipient (transferee/buyer). By comparison, the amendment would have required background checks for private transfers under a narrower set of circumstances than under S. 649 (as introduced) and S. 374 (as reported). Those narrower circumstances would have been limited to transfers between unlicensed persons at either a "gun show or event," or "pursuant to advertisement, posting, display or other listing on the Internet or other publication by the transferor of his intent to transfer, or the transferee of his intent to acquire, the firearm." Correspondingly, the amendment would have required the Attorney General to issue regulations covering "voluntary background checks" to provide FFLs with guidelines on how to conduct checks on behalf of unlicensed persons.

It is also notable that Representatives Peter King and Mike Thompson have introduced the Public Safety and Second Amendment Rights Act of 2013 (H.R. 1565), a bill that is nearly identical to the Manchin-Toomey amendment.

Grassley GOP Substitute Amendment

Although the GOP substitute amendment (S.Amdt. 725) offered by Senator Grassley did not include universal background check provisions, it did include a provision that would have provided FFLs with a statutory authorization to perform "voluntary background checks" for third parties. Under current practice, FFLs perform such checks for third parties by treating the firearms in question as if they had come into their inventory, but federal statute does not directly address such a scenario, and, to date, neither the FBI nor ATF has promulgated any regulations

[53] Also of note, ATF has issued an open letter to FFLs on facilitating background checks for private party transfers, and updated procedures for FFLs who voluntarily facilitate background checks for private transfers. These documents are posted at http://www.atf.gov/regulations-rulings/procedures/031513-open-letter-atf-procedure-2013-1.pdf, and http://www.atf.gov/regulations-rulings/procedures/031513-procedure-2013-1.pdf.

providing FFLs with direct authorization for such "third party" background checks; however, ATF has provided guidance in a January 16, 2103, open letter to FFLs and updated March 15, 2013, procedures.[54] Like the Manchin-Toomey amendment, the GOP substitute amendment was rejected by a yea-nay vote: 52-48 (Record Vote Number: 98).

Improving Background Checks

In the wake of the Virginia Tech tragedy,[55] the 110th Congress passed the NICS Improvement Amendments Act of 2007 (P.L. 110-180).[56] This act includes provisions designed to encourage states, tribes, and territories (states) to make available to the Attorney General certain records related to persons who are disqualified from acquiring a firearm, particularly records related to domestic violence misdemeanor convictions and restraining orders, as well as mental health adjudications. To accomplish this, the act establishes a framework of incentives and disincentives, whereby the Attorney General is authorized to either waive a grant match requirement or reduce a law enforcement assistance grant depending upon a state's compliance with the act's goals of bringing firearms-related disqualifying records online.

Under P.L. 110-180, Congress authorized the Attorney General to make additional grants to states to improve further electronic access to records, including court disposition and corrections records, which are necessary to fully facilitate NICS background checks. Under the act, the Attorney General is required to report annually to Congress on federal department and agency compliance with the act's provisions. Because DOJ's Bureau of Justice Statistics (BJS) administers this program, the BJS Director is required to report annually on the progress that states are making in providing reasonable estimates of the number of firearms-related disqualifying records that they have jurisdiction over, as well as the number of those records that have been made accessible to the FBI for NICS background check purposes.[57] BJS has designated this grant program the "NICS Act Record Improvement Program (NARIP)," although congressional appropriations documents simply refer to it as "NICS improvement."

As shown in Error! Reference source not found., Section 103(e) of the act included an authorization for appropriations for FY2009 through FY2013. The act directs that the grants provided under this authorization be made "in a manner consistent" with National Criminal History Improvement Program (NCHIP).[58] The act also requires that between 3% and 10% of each grant be allocated for a relief from disabilities program for persons adjudicated mentally defective. Also, as shown in Error! Reference source not found., Section 301(e) of the act included an additional authorization for appropriations for the same fiscal to improve state court

[54] Available at http://www.atf.gov/sites/default/files/assets/pdf-files/open_letter_3-15_revised_for_drupal2.pdf.

[55] On April 16, 2007, a student at Virginia Polytechnic Institute and State University shot 32 people to death and wounded many others.

[56] P.L. 110-180; January 8, 2008; 121 Stat. 2559.

[57] See U.S. Department of Justice, *Report to Congress Pursuant to the NICS Improvement Amendments Act of 2007 (P.L. 110-180)*, July 1, 2010.

[58] Under the Brady Act (P.L. 103-159), Congress authorized a grant program known as the National Criminal History Improvement Program (NCHIP), the initial goal of which was to improve electronic access to firearms-related disqualifying records, particularly felony conviction records. For further information, see Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *National Criminal History Program (NCHIP): Improving Criminal History Records for Background Checks, 2005*, July 2006.

computer systems to improve timeliness of criminal history dispositions. Under both authorizations, up to 5% of all grants may be set aside to provide assistance to tribal governments.

Table 2. NICS Improvement Authorizations and Appropriations Under P.L. 110-180

(dollars in millions)

Fiscal Year	Section 103(e)	Section 301(e)	Actual Appropriation
FY2009	125	62.5	10.000
FY2010	250	125.0	20.000
FY2011	250	125.0	16.567
FY2012	125	62.5	5.000
FY2013	125	62.5	12.000
Total	875	437.5	63.567

As an additional incentive, Section 102 of P.L. 110-180 also provides that on January 8, 2011, any state that provides at least 90% of disqualifying records is eligible for a waiver of the 10% match requirement under NCHIP for two years.[59] To be eligible for the waiver, as well as Section 103 grants, states are required to provide BJS with a reasonable estimate of the number of NICS-related disqualifying records that they hold within 180 days of enactment (July 6, 2008).

To further encourage compliance, Section 104 of P.L. 110-180 includes a schedule of discretionary and mandatory reductions in Byrne Justice Assistance Grants (JAG)[60] for states that do not provide certain percentages of disqualifying records:

- for a two-year period (January 8, 2011, through January 8, 2013), the Attorney General may withhold up to 3% of JAG funding from any state that provides less than 50% of disqualifying records;
- for a five-year period (January 8, 2013, through January 8, 2018), the Attorney General may withhold up to 4% of JAG funding from any state that provides less than 70% of disqualifying records; and
- after January 8, 2018, the Attorney General is required to withhold 5% of JAG funding from any state that provides less than 90% of disqualifying records.

The Attorney General's assessment of a state's progress is to be based upon the reasonable estimates that the state itself is required to provide under the act for the purposes of implementing the Section 103 grants and the Section 102 NCHIP waiver (discussed above).[61] The act also

[59] For FY2005-FY2010, BJS invoked its discretionary authority to increase the match requirement to 20%. For FY2011, BJS reportedly reduced the match requirement to 10%, the percentage match requirement set out under the Crime Identification Technology Act (CITA; P.L. 105-251); CRS conversation with BJS on March 7, 2011.

[60] For further information, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program*, by Nathan James.

[61] As of July 1, 2010, 41 states and 1 territory had provided estimates to DOJ. As of December 31, 2009, 68 federal departments or agencies had also responded to a DOJ survey related to their obligations under P.L. 110-180. Twenty-two reported possessing no disqualifying information. Twenty-three reported possessing secondary disqualifying information (e.g., employment background check investigative results). Ten agencies claimed to create and possess disqualifying information. And, ATF was reviewing those claims to determine whether that information was relevant to a NICS background check. Fourteen agencies needed further clarification from DOJ. See U.S. Department of Justice, (continued...)

allows the Attorney General to waive the mandatory 5% cuts if a state provides substantial evidence that it is making reasonable compliance efforts.

Senate Committee Markup

The Senate-reported Fix Gun Checks Act of 2013 (S. 374), sponsored by Senator Charles Schumer, would authorize appropriations of $100 million annually for FY2014-FY2018 to assist state and tribal governments with activities related to providing the FBI with greater accessibility to records on prohibited persons. For example, grants provided under this provision could be used for the following purposes:

- creating electronic systems, which provide accurate and up-to-date information that is directly related to NICS checks, including court disposition and corrections records;
- assisting states in establishing or enhancing their own capacities to perform NICS background checks;
- supplying accurate and timely information to the Attorney General concerning final dispositions of criminal records to databases accessed by NICS;
- supplying accurate and timely information to the Attorney General and FBI—solely for NICS checks—concerning the identity of persons who are prohibited from obtaining a firearm because they have been adjudicated as mental defective or committed to mental institutions;[62]
- supplying accurate and timely court orders and records of misdemeanor crimes of domestic violence for inclusion in federal and state law enforcement databases used to conduct NICS background checks; and
- collecting and analyzing data needed to demonstrate levels of state compliance with the act.

In addition, S. 374 would amend P.L. 110-180 to adjust the timeline of JAG grants as follows for states that do not provide greater access to prohibiting records:

- for a two-year period following the regulatory implementation of the reauthorized NARIP program, the Attorney General would be authorized to withhold up to 3% of JAG funding from any state that provides less than 50% of disqualifying records;
- for the next three-year period, the Attorney General would be authorized to withhold up to 4% of JAG funding from any state that provides less than 70% of prohibiting records; and

(...continued)

Report to Congress Pursuant to the NICS Improvement Amendments Act of 2007 (P.L. 110-180), July 1, 2010, pp. 5-6.

[62] On January 3, 2014, the Department of Justice issued proposed regulations, which the Administration maintains will clarify who is prohibited from possessing a firearm under federal law for reasons related to mental health. The Department of Health and Human Services issued a proposed regulation intended to address barriers that have prevented states from submitting information on those persons.

- thereafter, the Attorney General would be required to withhold 5% of JAG funding from any state that provides less than 90% of prohibiting records.

In addition, S. 374 would amend the Brady Act (P.L. 103-159) to include federal courts under the provisions that require all federal agencies to provide the FBI with access to any and all prohibiting records.

Although not related to background checks, S. 374 would also require all persons to report to the Attorney General a missing or stolen firearm with 24 hours of discovery.[63] Under current law, only FFLs are subject to such a requirement, and they are required to report to ATF such missing or stolen firearms within 48 hours of discovery.[64] The language of S. 374 has been included in the Safe Communities, Safe Schools Act of 2013 (S. 649).

Senate Floor Consideration

The Senate considered two amendments that would have addressed improving background checks, although both were rejected. Both of these amendments would have also addressed veterans' firearms eligibility and mental incompetency, as would have an amendment offered by Senator Burr.

Manchin-Toomey Amendment

The Manchin-Toomey amendment (S.Amdt. 715) would have amended P.L. 103-159 (the Brady Act) to authorize appropriations for NCHIP at $100 million annually for FY2014-FY2017. It would have also amended P.L. 110-180 (the NICS Improvement Amendments Act of 2007) to establish a new plan that states would be required to implement regarding providing records on prohibited persons to the FBI, or face reductions in their JAG funding. The amendment's plan would have addressed

- NICS accessibility to all prohibiting records,
- establishing qualitative and quantitative benchmarks for evaluative purposes, and
- possible JAG reductions for not meeting those benchmarks.

For example, states that did not meet benchmarks would have faced a 10% reduction in JAG funding in year one, an 11% reduction in year two, a 13% reduction in year three, and a 15% reduction in year four. Moreover, if a state failed to submit such a plan to the Attorney General, it would have faced those reductions immediately, whereas if the states had submitted plans, the Attorney General would be given discretion whether to make those reductions, even when the states had not met established benchmarks.

The Manchin-Toomey amendment would have also amended P.L. 110-180 to re-shape the NARIP program and authorize appropriations of $100 million annually for FY2014-FY2017 for this program. Under the amendment, grant funding could have been used to

- carry out assessments of the needs of states and state court systems;

[63] Proposed 18 U.S.C. §922(aa).

[64] 18 U.S.C. 923(g)(6).

- implement policies, systems, and procedures for the automation and submission of records on prohibited persons;
- create electronic systems to allow for the submission of such records;
- allow states to perform their own background checks; and
- develop and maintain disability relief programs.

A year from enactment, any state that did not implement a disability relief program would have faced the following reductions in JAG grant funding: 10% for year one, 11% for year two, 13% for year three, and 15% for year four. The amendment would have also required that states match any $1 in grant funding with $3 in state funding for assessments. It would have mandated further that all grant funding be used to improve records accessibility for NICS. Like P.L. 110-180, it would have continued to reserve up to 5% of total available funding for Indian tribal governments. As noted, the amendment was rejected.

Grassley GOP Substitute Amendment

By comparison, Senator Grassley offered the GOP substitute amendment (S.Amdt. 725) that would have also amended P.L. 110-180 to re-shape the NARIP program. Among other provisions, it would have authorized appropriations of $20 million annually for FY2013-FY2017 for this program, and it would have refocused the grant program on mental health records exclusively. In lieu of "adjudicated mental defective," it would have substituted the term, "mentally incompetent" in both 18 U.S.C. Section 922(d) and (g), and would have amended the GCA to define "has been adjudicated mentally incompetent or has been committed to a psychiatric hospital," "order or finding," and "psychiatric hospital." These definitions and other language would have arguably narrowed the scope of whom, and under what circumstances, a federal or state agency could refer a record on an individual to the FBI for inclusion in the NICS mental defective file. This language is nearly identical to the NICS Reporting Improvement Act of 2013 (S. 480), which was introduced by Senator Lindsey Graham.

Also, the GOP substitute, beginning 180 days after enactment, would have required the Attorney General to reduce JAG grant funding by 5% annually for states that have not provided prohibiting records to the FBI on at least 90% of persons "adjudicated mentally incompetent" or "committed to a psychiatric hospital," and by 10% annually following five years from enactment for the same reasons. It would have amended P.L. 103-159 (Brady Act) and required federal courts to provide records on persons prohibited from possessing firearms for reasons related to mental incompetency and commitment to the FBI for inclusion in NICS. And, it would have required federal agencies to report annually to Congress on the number of records they submit to NICS. As noted, the amendment was rejected.

Veterans, Mental Incompetency, and Firearms Eligibility

It is noteworthy that, when Congress considered the NICS Improvement Amendments Act of 2007 (P.L. 110-180), some opposition to the underlying bill coalesced around an assertion that, under those amendments, any veteran who was or had been diagnosed with Posttraumatic Stress Disorder (PTSD)[65] and was found to be a "danger to himself or others would have his gun rights

[65] PTSD is an anxiety disorder that can occur after one has been through a traumatic event. Symptoms may manifest (continued...)

taken away ... forever."[66] However, a diagnosis of PTSD in and of itself is not a disqualifying factor for the purposes of gun control under the NICS improvement amendments, previous law, or current law. The Veterans' Medical Administration has rarely, if ever, submitted any disqualifying records on VA medical care recipients to the FBI for inclusion in NICS for any medical/psychiatric reason (like PTSD). While veterans with PTSD or any other condition, who have been involuntarily committed under a state court order to a VA medical facility because they posed a danger to themselves or others, are ineligible to ship, transport, receive, or possess a firearm or ammunition under federal law, the Veterans' Medical Administration would not make a related referral about that ineligibility to the FBI. Instead, the state in which the court resides would submit the disqualifying record to the FBI, if such a submission would be appropriate and permissible under state law.[67]

Also, under the GCA, there is a provision that allows the Attorney General (previously, the Secretary of the Treasury) to consider petitions from a prohibited person for "relief from disabilities" and have his firearms transfer and possession eligibility restored.[68] Since FY1993, however, a rider on the ATF annual appropriations for salaries and expenses has prohibited the expenditure of any funding provided under that account on processing such petitions.[69] As a result, except for as provided under P.L. 110-180, the only way a person can reacquire his lost firearms eligibility is to have his civil rights restored or disqualifying criminal record(s) expunged or set aside, or to be pardoned for his crime. Consequently, prior to P.L. 110-180, a mental defective-related NICS referral by the VA to the FBI related to PTSD or any other condition could have been considered a life-long prohibiting factor with regard to firearms eligibility.

Under P.L. 110-180, Congress included provisions that require the VA to inform veterans and other beneficiaries (surviving spouses and dependents) beforehand that by having a fiduciary appointed on their behalf they will be considered "mentally incompetent" and, as a consequence, will lose their firearms eligibility under federal law. In addition, the act requires the VA to establish a process under which veterans or other beneficiaries who have been deemed mental incompetent may file for administrative relief and possibly have their gun rights restored if they are able to demonstrate that they are no longer afflicted by a disqualifying condition. The act makes the same requirement of any other federal agency that makes such a referral to the FBI. As a condition of federal assistance, the same requirement is made of states as well.

According to the Bureau of Justice Statistics, as of June 1, 2012, there were 153,298 files in the NICS mental defective file, which had been referred to the FBI by the VA. Those VA files

(...continued)

soon after the trauma, or may be delayed. For further information, see U.S. Department of Veterans' Affairs, National Center for Posttraumatic Stress Disorder, Fact Sheet, http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_what_is_ptsd.html.

[66] Larry Pratt, "Veterans Disarmament Act To Bar Vets From Owning Guns," September 23, 2007, http://www.prisonplanet.com/articles/september2007/230907Disarmament.htm.

[67] For further information on the treatment of mental illness and substance abuse for the purposes of gun control, see Donna M. Norris, M.D., et al., "Firearm Laws, Patients, and the Roles of Psychiatrists," *American Journal of Psychiatry*, August 2006, pp. 1392-1396.

[68] 18 U.S.C. §925(c). See also Relief from Disabilities Under the Act, 27 C.F.R. §478.144.

[69] For FY1993, see P.L. 102-393; 106 Stat. 1732 (1992). For FY2012, see P.L. 112-55; 125 Stat. 609 (2011). The FY2012 limitation provides "that none of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. 925(c)." For FY2013, see P.L. 113-6; 127 Stat. 248 (2013).

accounted for 99.3% of mental defective files (154,458) referred to the FBI by any federal department or agency. In the view of some Members of Congress, it is probably questionable that other federal agencies, such as the Social Security Administration, that provide similar disability and income maintenance benefits to persons who are mentally incapacitated, refer relatively few, if any, firearms-related disqualifying records about beneficiaries whom they serve to the FBI. Moreover, there are other individuals in the U.S. population who are similarly incapacitated due to their age-related infirmities or mental disabilities, but in many cases there are no mechanisms for state or local authorities to make similar referrals to the FBI. As a consequence, even with the changes put in place by P.L. 110-180, those Members of Congress may view the VA's continued referral of firearms-related disqualifying records on veterans who have had a fiduciary appointed on their behalf, but who had not behaved in a threatening or dangerous manner, to be an unwarranted indignity placed on individuals who had served their country honorably in the Armed Forces.

Other Members of Congress would maintain that the VA has dutifully complied with the law and that public safety is enhanced by making those referrals to the FBI. They might also argue that opposition to the VA policy waned between November 1998 and the 2007 congressional debate, demonstrating that veterans who were "adjudicated mental defective" rarely, if ever, sought to acquire and were subsequently denied firearms in a manner that could be described as an injustice. Those Members would likely underscore that, in their view, the VA's current policy does not diminish national recognition of those veterans' honorable service. Rather, the VA's policy has been implemented to protect those veterans and others from the harm that might result if they acquired a firearm and used it improperly due to reasons possibly related to their mental incompetency.

During Senate consideration of S. 649, the GOP substitute amendment would have amended veterans law to prohibit the VA from turning records on veterans or other beneficiaries who had been deemed mentally incompetent to the FBI for inclusion in NICS without "the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such person is a danger to himself or herself, or others." Similar language was included in the Manchin-Toomey amendment. And, Senator Richard Burr offered a similar amendment (S.Amdt. 720), but the Senate rejected it by a yea-nay vote: 56-44 (Record Vote Number: 102). On May 8, 2013, however, the House Committee on Veterans' Affairs approved by voice vote a bill—the Veterans 2nd Amendment Protection Act (H.R. 602)—that includes similar provisions.[70] The Senate Committee on Veterans' Affairs approved a nearly identical bill on September 4, 2013 (S. 572).

Gun Trafficking

Criminal "gun trafficking" essentially entails the movement or diversion of firearms from legal to illegal markets.[71] Therefore, it follows that the entire GCA is arguably a statutory framework

[70] Related proposals were acted upon in either one or both chambers in the 110th, 111th, and 112th Congresses.

[71] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *Project Gunrunner: The Southwest Border Initiative*, ATF P 3317.6, March 2009, available at http://www.atf.gov/publications/download/p/atf-p-3317-6.pdf.

It is noteworthy that in 2006 the U.S. Sentencing Commission amended its guidelines to include the following definition: "firearms trafficking" occurred if an offender, "regardless of whether anything of value was exchanged," engaged in the following activities: (1) transported, transferred, or otherwise disposed of two or more firearms to another individual, or received two or more firearms with the intent to transport, transfer, or otherwise dispose of (continued...)

designed to combat gun trafficking domestically, particularly interstate gun trafficking.[72] ATF has developed a nationwide strategy to reduce firearms trafficking and violent crime by preventing convicted felons, drug traffickers, and juvenile gang members from acquiring firearms from gun traffickers.[73] Gun trafficking cases include, but are not limited to, the following activities:

- straw purchasers or straw purchasing rings;
- trafficking in firearms by corrupt federally licensed gun dealers;
- trafficking in firearms by unlicensed dealers (i.e., persons who deal in firearms illegally as the principal source of their livelihood);
- trafficking in stolen firearms; and
- trafficking of secondhand firearms acquired from unlicensed persons at gun shows, flea markets, and other private venues.[74]

Unlike other forms of contraband, almost all illegal firearms used criminally in the United States were diverted at some point from legal channels of commerce.[75] ATF works to reduce firearms-related crime with two approaches, industry regulation and criminal investigation.

ATF Regulation

ATF regulates the U.S. firearms industry by inspecting FFLs to monitor their compliance with the GCA and NFA, and to prevent the diversion of firearms from legal to illegal channels of commerce. Despite its crime-fighting mission, ATF's business relationships with the firearms industry and larger gun-owning community have been a perennial source of tension, which from time to time has been the subject of congressional oversight.[76] Nevertheless, under current law,

(...continued)

firearms to another individual; and (2) knew or had reason to believe that such conduct would result in the transport, transfer, or disposal of a firearm to an individual (a) whose possession or receipt of the firearm would be unlawful; or (b) who intended to use or dispose of the firearm unlawfully. See United States Sentencing Commission, *Guidelines Manual*, §2K2.1(b)(5) (November 2006).

[72] With regard to Southwest Border gun trafficking, it is significant to note that the GCA does not include any provisions that directly address smuggling firearms out of the United States, across international boundaries, to countries like Mexico. However, the Arms Export Control Act (AECA; 22 U.S.C. §2778 et seq.) does include provisions that directly address such cross-border illegal arms trafficking.

[73] U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of Field Operations, *Project Gunrunner: A Cartel Focused Strategy*, September 2010.

[74] U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Following the Gun: Enforcing Federal Laws against Firearms Traffickers*, June 2000, p. 11.

[75] Greg Ridgeway, Glenn L. Pierce, and Anthony A. Braga et al., *Strategies for Disrupting Illegal Firearms Markets: A Case Study of Los Angeles*, RAND Corporation, 2008, p. 1.

[76] For example, in the 109th Congress, the House Judiciary Crime subcommittee held two oversight hearings examining ATF firearms enforcement operations at guns shows in Richmond, VA, in 2005. ATF agents reportedly provided state and local law enforcement officers with confidential information from background check forms (ATF Form 4473s), so that officers could perform residency checks on persons who had otherwise legally purchased firearms at those gun shows. Questions were also raised as to whether ATF agents had profiled gun purchasers at those gun shows on the basis of race, ethnicity, and gender. See U.S. Congress, House of Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Oversight Hearing on the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) Parts I & II: Gun Show Enforcement*, February 15 and 28, 2006. Also see Department of Justice, Office of the Inspector General, The Bureau of Alcohol, Tobacco, Firearms and Explosives' Investigative Operations at Gun Shows, I-2007-007, June 2007.

ATF Special Agents (SAs)[77] and Industry Operations Investigators (IOIs)[78] are authorized to inspect or examine the inventory and records of an FFL *without search warrants* under three scenarios:[79]

- in the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the FFL;
- to ensure compliance with the record keeping requirements of the GCA—not more than once during any 12-month period, or at any time with respect to records relating to a firearm involved in a criminal investigation that is traced to the licensee; or
- when such an inspection or examination is required for determining the disposition of one or more firearms in the course of a criminal investigation.

By inspecting the firearms transfer records that FFLs are required by law to maintain, ATF SAs and IOIs are able to trace crime guns from their domestic manufacturer or importer to the first retail dealer that sold those firearms to persons in the general public, generating vital leads in homicide and other criminal investigations. In addition, by inspecting those records, ATF investigators sometimes discover evidence of corrupt FFLs dealing in firearms "off the books," straw purchases, and other patterns of illegal behavior.

Anatomy of a Firearms Straw Purchase

A "straw purchase" occurs when an individual poses as the actual transferee, but he is actually acquiring the firearm for another person. In effect, he serves as an illegal middleman. As part of any firearms transfer from an FFL to a private person, the GCA requires them to fill out jointly an ATF Form 4473. In addition, the FFL is required to verify the purchaser's name, address, date of birth, and other information by examining a government-issued piece of identification, most often a driver's license. Among other things, the purchaser attests on the ATF Form 4473 that he is not a prohibited person, and that he is the "actual transferee/buyer."[80] Hence, straw purchases are known as "lying and buying for the other guy." Straw purchases are illegal under two provisions of the GCA.

> If the purchaser makes any false statement to a FFL with respect to any fact material to the lawfulness of a prospective firearms transfer, it is a federal offense punishable under 18 U.S.C. §922(a)(6). This provision also captures misrepresentations such as presenting false identity documents. Violations are punishable by up to 10 years of imprisonment under 18 U.S.C. §924(a)(2).[81]

[77] For FY2012, Congress provided ATF with funding for 2,539 SA positions.

[78] For FY2012, Congress provided ATF with funding for 834 IOI positions.

[79] 18 U.S.C. §923(g)(1)(B).

[80] On the ATF Form 4473, question 11a reads: "Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you."

[81] In *Abramski v. United States*, the Supreme Court held that a person who buys a firearm for someone else while falsely claiming that he is acquiring it for himself makes a material misrepresentation punishable under 18 U.S.C. § 922(a)(6), even if the person for whom he bought the firearm is otherwise eligible to be transferred a firearm. For further information, see CRS Report WSLG991, *Supreme Court Decides Last Firearms Challenge for the 2013-2014 Term*, by Vivian S. Chu.

> It is also illegal for any person knowingly to make any false statement with respect to the records that FFLs are required to maintain under 18 U.S.C. §924(a)(1)(A). This provision, however, also captures misrepresentations related to licensure and other benefits under the GCA. Violations are punishable by up to five years of imprisonment under 18 U.S.C. §924(a)(1)(D).

Straw purchases, however, are not easily detected, because their illegality only becomes apparent when the straw purchaser's true intent is revealed by a subsequent transfer to the actual buyer (third party). In many cases, the actual buyer may be a prohibited person, who would not pass a background check. Under such a scenario, if the straw purchaser knew or had reasonable cause to know the actual transferee was a prohibited person, he would also be in violation of 18 U.S.C. Section 922(d), for which the penalty is up to 10 years of imprisonment.[82] It would also be a violation for the prohibited person to possess or receive the firearm under 18 U.S.C. Section 922(g), for which the penalty is also up to 10 years of imprisonment.[83]

Alternatively, the actual buyer may not be a prohibited person, but may be seeking to acquire firearms without any paper trail linking him to the acquisition of the firearm. Under such a scenario, however, the straw purchase and subsequent illegal transfer would be even less apparent for several reasons. Under federal law, it is *legal* for an unlicensed, private person to purchase firearms and then resell them or give them away, as long as the

- transferees *are not* prohibited or underage persons;
- transferors *do not* deal in firearms in a volume that would require licensing; and
- transfers are *intrastate*, as generally only federally licensed gun dealers can legally transfer firearms *interstate*.

Hence, individuals may buy several firearms at a time with the intention of giving those firearms away as presents to anyone, as long as they do not present those firearms to persons who are underage, out-of-state residents, or prohibited persons. They may also buy firearms and, then, sell those firearms at any time, as long as selling firearms is not the principal objective of their livelihood and profit, in which case they would be required to be federally licensed to deal in firearms. Furthermore, no federal background checks are required for recipients of subsequent intrastate firearms transfers.

On the other hand, if the suspected straw purchaser were observed departing the licensed gun dealer's place of business and traveling immediately to another locale, where he transferred the firearm(s) to another person, there would be a reasonable suspicion that he was a straw purchaser. However, the actual buyer would not have committed a crime unless it could be proven that he had sponsored the straw purchase.[84] Usually, such illegal arrangements become clear when the straw purchaser is interviewed by agents and admits to having bought the firearms for the third party, non-prohibited person. Moreover, depending on the time that elapses between the initial straw purchases and subsequent transfers to the actual buyer (third party), the illegality of the transfers may not become apparent until the actual buyer's true intent is revealed, when he either transports those firearms across state lines to be sold or bartered, attempts to smuggle them across an international border, or engages in some other illegal act.

[82] 18 U.S.C. §924(a)(2).

[83] Ibid.

[84] It is unlawful for any person to aid, abet, counsel, command, or solicit a criminal act (18 U.S.C. §2).

Sometimes, the behavior of the prospective transferee (straw purchaser) may raise reasonable suspicions. For example, during a controversial ATF Phoenix-based investigation known as "Operation Fast and Furious," several of the individuals under indictment made multiple purchases from the same FFL of multiple semiautomatic firearms. Raising suspicions further, they paid for these firearms with thousands of dollars in cash. Indeed, FFLs contacted ATF about these suspicious transfers, prompting the investigation. They did so, in part, because they realized that these firearms might be traced back to their businesses and they probably wanted to avoid any negative attention that those traces might bring back on them. It is notable that if an FFL believes a firearms transfer to be suspicious, he may choose not to sell those firearms to the individuals in question. If he should proceed with the transfer, however, as long as he had conducted the required criminal background check on the prospective buyer, and he and the prospective buyer had filled out the proper paperwork, his obligations under federal law would have been fulfilled.

In summation, with regard to interstate transfers, it is unlawful for any person who is not federally licensed to deal in firearms to transport or receive a firearm into his own state of residence that was obtained in another state.[85] In addition, it is unlawful for any person who is not federally licensed to deal in firearms to deliver a firearm to another unlicensed person who resides in a state other than the transferor's state of residence.[86] Violations of either provision are punishable by a fine and/or not more than five years of imprisonment.[87] It is also unlawful to smuggle firearms, or any other merchandise contrary to U.S. law from the United States.[88] Violations are punishable by a fine and/or not more than 10 years of imprisonment.[89]

Federal Prosecutions under 18 U.S.C. Sections 922(a)(6) and 924(a)(1)(A)

According to the Government Accountability Office (GAO), the largest percentage of Southwest Border gun trafficking cases is comprised of multiple straw purchases.[90] And, large-scale straw purchasing schemes were at the center of several ATF Phoenix-based gun trafficking investigations, including Operation Fast and Furious. Contributing to the controversy surrounding Operation Fast and Furious, reportedly, the U.S. Attorney's Office in Arizona was reluctant to prosecute straw purchasing cases, even though ATF conducted several investigations involving dozens of firearms and multiple defendants from 2006 through 2010.[91] Some of this reluctance to prosecute referred cases may have stemmed from legal interpretations (and underlying case law) made by the U.S. Attorney's Office in Arizona that "differed substantially from those of other

[85] 18 U.S.C. §922(a)(3).

[86] 18 U.S.C. §922(a)(5).

[87] 18 U.S.C. §924 (a)(1)(D).

[88] 18 U.S.C. §554.

[89] Ibid.

[90] U.S. Government Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges*, GAO-09-709, June 29, 2009, p. 21.

[91] U.S. Congress, *Fatally Flawed: Five Years of Gunwalking in Arizona*, House Committee on Oversight and Government Reform, Minority Staff Report, 112th Cong., 2nd Sess., January 2012, p. 72, http://www.scribd.com/doc/79930290/%E2%80%9CFatally-Flawed-Five-Years-of-Gunwalking-in-Arizona-%E2%80%9D?tw_p=twt.

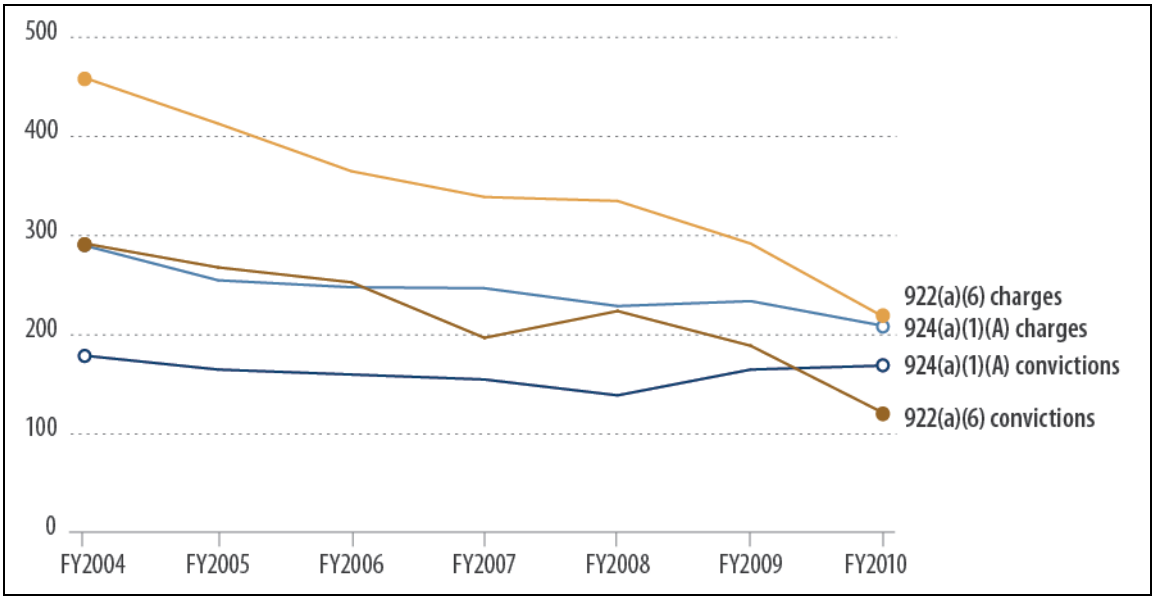
See also Colby Goodman and Michel Marizco, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges*, Woodrow Wilson International Center for Scholars Mexico Institute and University of San Diego Trans-Border Institute, September 2010, p. 29.

U.S. Attorney's Offices."[92] Other considerations could have included allocation of scarce resources and prosecutorial priorities. Nonetheless, as shown below, federal prosecutions for straw purchasing and related offenses nationally appear to have fallen off significantly in recent years, despite congressional efforts to increase ATF appropriations to combat gun trafficking.

In addition, at a hearing on Operation Fast and Furious, an ATF agent testified that the penalties levied under current law are not harsh enough to deter gun trafficking to Mexican drug trafficking organizations. He opined that the "statute doesn't carry significant jail time," and that straw purchases were viewed as "paperwork violations." To explore this assertion, CRS requested criminal caseload data from the U.S. Attorneys Office for 18 U.S.C. Sections 922(a)(6) and 924(a)(1)(A) for FY2004 through FY2010. It is noteworthy, however, that the criminal cases under these provisions include violations involving false identities and entries, in addition to straw purchases.

Figure 1. Federal Defendants Charged and Convicted Nationally under 18 U.S.C. Sections 922(a)(6) and 924(a)(1)(A)

(FY2004-FY2010)



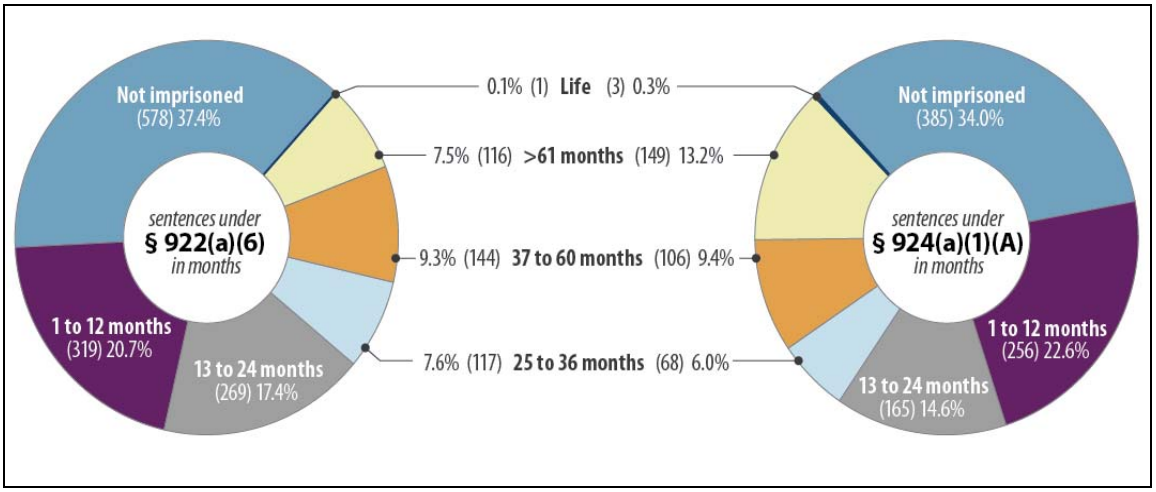
Source: Data from U.S. Attorney's Office. This figure reflects the most current data available to CRS.

Notes: Under 18 U.S.C. Section 922(a)(6), it is unlawful if a firearms purchaser makes any false statement to a FFL with respect to any fact material to the lawfulness of a prospective firearms transfer. Under 18 U.S.C. Section 924(a)(1)(A), it is unlawful for any person knowingly to make any false statement with respect to the records that FFLs are required to maintain.

[92] Ibid.

Figure 2. Federal Sentences Imposed Nationally Under 18 U.S.C. Sections 922(a)(6) and 924(a)(1)(A)

(FY2004-FY2010)



Source: Data from U.S. Attorney's Office. This figure reflects the most current data available to CRS.

Notes: Violations of 18 U.S.C. Section 922(a)(6) are punishable by up to 10 years of imprisonment under 18 U.S.C. Section 924(a)(2). Violations of 18 U.S.C. Section 924(a)(1)(A) are punishable by up to five years of imprisonment under 18 U.S.C. Section 924(a)(1)(D).

As **Figure 1** shows, nationally, the defendants charged under Section 922(a)(6) declined from 459 for FY2004 to 218 for FY2010, or by about half (-52.5%). Similarly, defendants convicted under Section 922(a)(6) declined by more than half (-58.6%) for those years, even though they increased from FY2007 to FY2008 (17.3%). The defendants charged under Section 924(a)(1)(A) also declined from 290 for FY2004 to 2009 for FY2010, but at a slower rate of change (-27.9%). Convictions under that provision also declined through FY2008 (-22.3%), but increased for FY2009 (18.7%) and FY2010 (2.4%). Under either provision, about two-thirds of defendants were convicted during FY2004 through FY2010 cumulatively.

As **Figure 2** shows, moreover, over a third of the individuals convicted under either provision received no prison sentence. Over a third received a prison sentence of up to two years. The remainder received prison sentences of greater than two years. Several individuals received life sentences, but those individuals were likely career criminals who were convicted of additional offenses.

Gun Trafficking Proposals

The President's plan to reduce gun violence calls for increased penalties for gun trafficking. Although the Administration has not transmitted any specific proposal or language to Congress, several bills that address gun trafficking and/or straw purchases have been reintroduced in the 113th Congress. On January 22, 2013, Senator Patrick J. Leahy, chairman of the Senate Committee on the Judiciary, introduced Stop Illegal Trafficking in Firearms Act of 2013 (S. 54).

Senate Committee Markup

On March 7, 2013, the committee approved this bill. As amended and ordered reported, S. 54 would amend the GCA to establish standalone straw purchasing and gun trafficking prohibitions and increase related penalties. The gun trafficking prohibitions are similar to those included in S. 179 and H.R. 452 (described below).

Under the straw purchasing prohibition, S. 54 would prohibit any unlicensed person from knowingly purchasing, or attempting or conspiring to purchase, any firearm from an FFL on behalf of or at the request or demand of another person, known or unknown.[93] Under a more narrowly focused, but parallel, provision, S. 54 would prohibit any unlicensed person from purchasing or conspiring to purchase any firearm from another unlicensed person on behalf of or at the request or demand of another person, known or unknown.[94] In the latter case, however, the prohibition would be limited to subsequent transfers on behalf of persons who

- are prohibited under 18 U.S.C. Sections 922(g) and (n);
- intend to carry, possess, sell, or otherwise dispose of the firearm in furtherance of a crime of violence[95] or drug trafficking crime;[96]
- do not reside in any state and who are not citizens of the United States; or
- intend to sell or otherwise dispose of the firearm to any person who would fall under any of the categories described above.

Under either provision, violations would be punishable by a fine and/or imprisonment of not more than 15 years.

Notwithstanding the "crime of violence" prohibition already included under the second straw purchasing provision noted above, S. 54 would additionally provide that if prohibited transfers under either provision were committed knowing, or with reasonable cause to believe, that the firearm would be used in a crime of violence, violations would be punishable by a fine and/or imprisonment of not more than 25 years. Exceptions would be provided for bona fide gifts and winners of organized raffles, contests, or auctions.

S. 54 would amend the GCA to establish standalone "trafficking in firearms" offenses under three provisions.[97] The first provision would make it unlawful for any person to receive, ship, transfer,

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[93] Proposed 18 U.S.C. §932(b)(1).

[94] Proposed 18 U.S.C. §932(b)(2).

[95] Under S. 54, the term "crime of violence" has the same meaning as 18 U.S.C. §924(c)(3):

> an offense that is a felony and—(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

[96] Under S. 54, the term "drug trafficking crime" has the same meaning as 18 U.S.C. §924(c)(2):

> any felony punishable under the Controlled Substances Act (21 U.S.C. §801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. §951 et seq.), or the Maritime Drug Law Enforcement
>
> Act (46 U.S.C. App. §1901 et seq.).

[97] Proposed 18 U.S.C. §933(a), (b), and (c).

cause to be transported, or otherwise dispose of two or more firearms that have been shipped or transported in interstate or foreign commerce (regardless of whether anything of value is exchanged), while knowing, or having reasonable cause to believe, that one or more of those firearms would be transferred subsequently to another person whose receipt of a firearm would be unlawful or who intends to or will use, carry or possess, or dispose of the firearm unlawfully, or would result in a felony violation of federal law. The second provision would make it unlawful for any person knowingly to direct, promote, or facilitate such conduct. The third provision would make it unlawful to conspire to violate either provision described above. Violations of these provisions would be punishable by a fine and/or not more than 15 years of imprisonment. Moreover, it would provide that any person who acts in the capacity of an organizer, a supervisory position, or any other management position in concert with five or more other persons would be subject to a fine and/or not more than 25 years of imprisonment.

With regard to violations of the bill's straw purchase or trafficking in firearms provisions (proposed 18 U.S.C. §§932 and 933), S. 54 would include such offenses under asset forfeiture, Title III electronic communications intercept, racketeering, and money laundering provisions.

S. 54 would amend a provision of the GCA that prohibits any person from transferring a firearm or ammunition to any prohibited person[98] to include specifically not only persons already prohibited under current law (under 18 U.S.C. §§922(g) and (n)), but also persons who

- in turn intend to sell or otherwise dispose of the firearm or ammunition to any prohibited person; or
- intend to sell or otherwise dispose of the firearm or ammunition in furtherance of a crime of violence, drug trafficking offense, or illegal export of the firearm or ammunition.

And, S. 54 would increase the penalty for unlawful transfer to a prohibited person or possession by a prohibited person under either 18 U.S.C. Section922(d) or (g) from not more than 10 years to not more than 15 years of imprisonment.[99]

Moreover, S. 54 would amend the GCA (at 18 U.S.C. §924(h)) to make it unlawful for any person to receive or transfer a firearm or ammunition knowingly, or to attempt or conspire to do so knowingly, if he had reasonable cause to believe that such firearm or ammunition would

- be used to commit a crime of violence or drug trafficking;
- violate the Arms Export Control Act (22 U.S.C. §2751 et seq.);[100]

[98] 18 U.S.C. §922(d).

[99] Proposed 18 U.S.C. §924(a)(8).

[100] The Arms Export Control Act of 1976 (AECA; codified, as amended, at 22 U.S.C.§2778 et seq.) governs the exportation and importation of arms, ammunition, and implements of war. In other words, under the AECA, the President has the authority to control the export and import of defense articles and defense services in furtherance of world peace and the security and foreign policy of the United States. Authority to administer the permanent import provisions of the AECA was delegated to the Attorney General, while the authority to administer the export and temporary import provisions of the AECA was delegated to the Secretary of State. See Executive Order 11958 of January 18, 1977, as amended by Executive Order 13284 of January 23, 2003, 3 C.F.R. Executive Order 13284. Hence, the Department of State's Bureau of Political Military Affairs' Directorate of Defense Trade Controls (DDTC) administers the export provisions, while DOJ's ATF has traditionally administered and continues to administer the importation provisions. Under the Homeland Security Act of 2002 (P.L. 107-296), ATF was transferred from the (continued...)

- violate the International Emergency Economic Powers Act (IEEPA; 50 U.S.C. §1701 et seq.);[101]
- violate the Foreign Narcotics Kingpin Designation Act (Kingpin Act; 21 U.S.C. §1901 et seq.);[102] or
- violate Section 212(a)(2)(C) of the Immigration and Nationality Act (8 U.S.C. §1182(a)(2)(C)).[103]

Violations under this provision would be punishable by a fine and/or not more than 25 years of imprisonment, the term for which would run consecutively (not concurrently) with any other term of imprisonment imposed on an offender under the straw purchasing provisions described above.

With regard to cross-border smuggling, S. 54 would amend the GCA (at 18 U.S.C. §924(k)) and increase the penalty from not more than 10 years to not more than 15 years of imprisonment for smuggling a firearm or ammunition *into* the United States while engaged in or promoting conduct that would be a violation of federal or state controlled substances laws, or a crime of violence. It would also establish a similar offense for smuggling a firearm or ammunition *out of* the United States while engaged in or promoting conduct in violation of federal controlled substance laws or a crime of violence. Offenses would be punishable by a fine and/or up to 15 years of imprisonment.

Finally, S. 54 includes a limitation on DOJ that would prohibit any undercover operation whereby an FFL (federally licensed gun dealer) would be directed, instructed, enticed, or otherwise encouraged by a DOJ agent to transfer a firearm to an individual, if there were reasonable cause to believe that such an individual would be purchasing a firearm on behalf of another individual for an illegal purpose, unless certain safeguards were met. This last provision was offered as an amendment by Senator Charles E. Grassley, the ranking minority Member, during full committee markup. This provision addresses ATF's conduct of Operation Fast and Furious.

Senate Floor Action

The language of S. 54 was included in the Safe Communities, Safe Schools Act of 2013 (S. 649). During Senate consideration of S. 649 on April 17, 2013, Senator Leahy offered a revised version of S. 54 as an amendment (S.Amdt. 713), but it was rejected by a yea-nay vote: 52-48 (Record

(...continued)

Department of the Treasury to DOJ. Importation regulations issued under this law are in 27 C.F.R. Part 447.

[101] The IEEPA gives the President authority to regulate commerce after declaring a national emergency in response to any foreign-sourced unusual and extraordinary threat.

[102] Under the Kingpin Act, the Department of the Treasury, in consultation with several other federal agencies, blocks the property and interests in property, subject to U.S. jurisdiction, owned and controlled by significant foreign drug traffickers.

[103] Under 8 U.S.C. §1182(a)(2)(C), "CONTROLLED SUBSTANCE TRAFFICKERS- Any alien who the consular officer or the Attorney General knows or has reason to believe—(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in §102 of the Controlled Substances Act (21 U.S.C. §802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or (ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible (from entry into the United States)."

Vote Number: 99), because the Senate had agreed by unanimous consent to raise passage of the amendment to a 60-vote threshold.

The GOP substitute offered by Senator Grassley would have established standalone straw purchasing and trafficking in firearms offenses, which were similar to the provisions in S. 54 and the Leahy amendment. It would have increased the penalty for "lying and buying," that is, providing any misrepresentation to an FFL in connection with a firearms transfer under 18 U.S.C. Section 924(a)(1)(A), from five to 10 years of imprisonment. It would have increased the penalty for illegal possession under 18 U.S.C. Sections 922(g) and (n), as well as unlawful transfers to prohibited persons under 18 U.S.C. Section 922(d), from 10 to 15 years of imprisonment. And, it included changes to 18 U.S.C. Sections 924(h) and (k), which were similar to those in S. 54 and the Leahy amendment, except the GOP substitute also included a federal crime of terrorism under the covered offenses.[104] As noted above, the amendment was rejected.

Other Gun Trafficking Proposals

In the 113th Congress several other gun trafficking proposals have been introduced. They are briefly described below.

Gun Trafficking Prevention Act of 2013 (S. 179 and H.R. 452)

On February 12, 2013, Senator Kirsten E. Gillibrand introduced a proposal (S. 179) that would amend the GCA to establish a standalone federal "trafficking in firearms" offense under two provisions. The first provision would make it unlawful for any person to receive, transfer, or otherwise dispose of two or more firearms that have been shipped or transported in interstate or foreign commerce (regardless of whether anything of value is exchanged), while *knowing, or having reasonable cause to believe*, that one or more of those firearms would be transferred subsequently to another person whose receipt of a firearm would be unlawful, or who intends to or will use, carry or possess, or dispose of the firearm unlawfully. The second provision would make it unlawful for any person knowingly to direct, promote, or facilitate such conduct. Violations of either provision would be punishable by a fine and/or not more than 20 years of imprisonment. Moreover, it would provide that any person who acts in the capacity of an organizer, a supervisory position, or any other management position in concert with five or more other persons would be subject to not more than 25 years of imprisonment. In addition, S. 179 would make it unlawful to conspire to violate the first provision, and would make such a conspiracy punishable by a fine and/or not more than 10 years of imprisonment. Exception would be provided under the bill for transfers of gifts or by bequest. Representative Carolyn B. Maloney has introduced a similar bill (H.R. 452). The "trafficking in firearms" provisions included in S. 54, as amended and approved by the Senate Committee on the Judiciary, are similar to the provisions in S. 179 and H.R. 452.

Straw Purchaser Penalty Enhancement Act (H.R. 404)

On January 22, 2013, Representative Adam Schiff reintroduced a proposal (H.R. 404) that would create a two-year mandatory minimum sentence for straw purchasing. This bill would amend the GCA to create a mandatory minimum sentence of two years of imprisonment for any person who

[104] The term "Federal crime of terrorism" is defined at 18 U.S.C. §2332b(g)(5).

makes a false statement in violation of either 18 U.S.C. Sections 922(a)(6) or 924(a)(1)(A) in the firearms transfer records (ATF Form 4473) that FFLs are required to maintain under current law, if the transferee

- knows or has reason to believe that the false statement will further the transfer of two or more firearms to a prohibited person; and
- has the intent to conceal the identity of the prohibited person to whom the firearm is to be transferred.

Detectives Nemorin and Andrews Anti-Gun Trafficking Act of 2013 (H.R. 722)

On February 14, 2013, Representative Peter T. King introduced a proposal (H.R. 722) that would also amend the GCA to create a standalone federal "trafficking in firearms" offense punishable by a fine and/or imprisonment of not more than 20 years for committing certain existing offenses under the GCA under one of two sets of conditions. The first set of conditions would be the offering for sale, transfer, or barter of two or more handguns, semiautomatic assault weapons,[105] short-barreled shotguns, short-barreled rifles, or machine guns, of which at least one was transported, received, or possessed by that person and stolen or had the importer's or manufacturer's serial number removed. The second set of conditions would be the offering for sale, transfer, or barter of two or more handguns, semiautomatic assault weapons, short-barreled shotguns, short-barreled rifles, or machine guns, of which at least one was offered by sale, transfer, or barter to another who is either prohibited by federal or state law from possessing a firearm, not at least 18 years of age, is in a school zone, or is not a resident of the state in which he has attempted to acquire the firearms.

If someone committed one of the offenses already punishable by the GCA,[106] each of which carries its own penalty, under either of these conditions, such a person could be prosecuted under this separate gun trafficking crime and face a fine and/or imprisonment of not more than 20 years. This bill is silent as to whether the sentences for the proposed "gun trafficking" crime and the

[105] It is notable that a statutory definition for "semiautomatic assault weapon" no longer exists. The 1994 Semiautomatic Assault Weapons (SAW) Ban, which expired in 2004, had defined, for example, a rifle as a semiautomatic assault weapon if it was able to accept a detachable magazine and included two or more of the following five characteristics: (1) a folding or telescopic scope, (2) a pistol grip, (3) a bayonet mount, (4) a muzzle flash suppressor or threaded barrel capable of accepting such a suppressor, or (5) a grenade launcher. (Former 18 U.S.C. §921(a)(30)). Similar definitions existed for semiautomatic pistols and shotguns.

[106] The GCA offenses in title 18 that would have been implicated in this new gun trafficking crime were (1) §922(a)(1)(A), unlawful to willfully engage in business of dealing firearms without a license; (2) §922(a)(3), unlawful for non-licensee to willfully transport or receive a firearm obtained in another state into his state of residence; (3) §922(a)(6), unlawful to knowingly make a materially false statement to a FFL; (4) §922(b)(2), unlawful for an FFL to willfully deliver a firearm to a person where the purchase or possession would violate state law; (5) §922(b)(3), unlawful for an FFL to willfully deliver a firearm to a person residing in a state other than the FFL's; (6) §922(b)(5), unlawful for an FFL to willfully dispose of a firearm without making entries required by law; (7) §922(d), unlawful for any person to knowingly dispose of a firearm to a prohibited person; (8) §922(g), unlawful for any prohibited person to knowingly receive or possess firearm or ammunition; (9) §922(i), unlawful for any person to knowingly transport or ship a stolen firearm; (10) §922(j), unlawful for any person to knowingly receive, possess, conceal, store, barter, sell, or dispose of a stolen firearm; (11) §922(k), unlawful for any person to knowingly transport, ship, or receive a firearm that has an obliterated or altered serial number; (12) §922(m), unlawful for an FFL to knowingly make a false entry in or improperly maintain records required by law; (13) §922(n), unlawful for any person to willfully ship or receive firearms or ammunition if under indictment for felony; (14) §924(c), unlawful for any person to use or carry a firearm during or in relation to a federal crime of violence or drug trafficking crime; (15) §924(h), unlawful for any person to transfer a firearm knowing it will be used to commit a crime of violence or a drug trafficking crime.

individual predicate GCA offenses, if a person was prosecuted under both provisions, would be served consecutively or concurrently.

Military Style Firearms

Under the Violent Crime Control and Law Enforcement Act of 1994, Congress banned for 10 years the possession, transfer, or further domestic manufacture of semiautomatic assault weapons (SAWs) and large-capacity ammunition feeding devices (LCAFDs) that hold more than 10 rounds that were not legally owned or available prior to the date of enactment (September 13, 1994). The SAW ban prohibited the further manufacture for, and transfer to, private persons certain firearms that (1) were listed by make and model as SAWs, or (2) met a SAW "military-style" features test for rifles, pistols, and handguns. Semiautomatic assault weapons and LCAFDs that were legally owned prior to the ban were grandfathered, meaning they were not restricted and remained available for transfer under applicable federal and state laws. The SAW-LCAFD ban expired on September 13, 2004.

Senator Lautenberg and Representative McCarthy have introduced the Large Capacity Ammunition Feeding Device Act (S. 33/H.R. 138), a bill that would prohibit the manufacture or importation of detachable magazines of over 10-round capacity. While this proposal would grandfather existing magazines, it would also make those grandfathered magazines non-transferable, meaning that those magazines could not be sold or traded and would become contraband upon the owner's death. This bill would require that any newly produced magazines, or large-capacity ammunition feeding devices, be identified by a serial number that clearly shows that the device was manufactured after enactment. (Senator Lautenberg has introduced a modified proposal, S. 691.)

Senator Feinstein and Representative McCarthy have introduced similar proposals (S. 150 and H.R. 437), both titled the Assault Weapons Ban of 2013. These similar proposals would build upon and modify the expired federal ban. These proposals, like S. 33/H.R. 138, would ban ammunition magazines with a greater than 10-round capacity and would grandfather existing magazines, as did the expired federal ban, but they would also ban any further transfer of those magazines. For semiautomatic firearms, these proposals would establish separate "one military feature" tests for rifles, pistols, and shotguns that are in many ways similar to California state law, instead of the "two military features" tests that were included under the expired 1994-2004 federal ban (see the tables below). They would prohibit the future manufacture and importation of firearms that fell under these tests, as well as 157 firearms specifically named in the proposal by make and model. The proposals would grandfather any existing firearms that met the "one feature" tests, but they would require background checks for any future transfers of grandfathered "assault weapons" by an unlicensed person to another unlicensed person. Finally, the proposals would exempt from the ban over 2,200 firearms by make and model.

On March 14, 2013, the Senate Committee on the Judiciary approved S. 150. Several amendments offered by the minority were rejected during full committee markup. As described above, Senator Reid included several other Senate-reported bills in in the Safe Communities, Safe Schools Act of 2013 (S. 649). Although S. 649 did not include the language of S. 150, according to press accounts, Senator Feinstein indicated that Senator Reid had assured her that he would

allow her to offer an "assault weapons" amendment when the Senate considered the proposals described above.[107]

On April 17, 2013, Senator Feinstein offered her proposal as an amendment (S.Amdt. 711) during Senate consideration of S. 649, but the amendment was rejected by a yea-nay vote: 40-60 (Record Vote Number: 101). In addition, Senator Blumenthal (for Senator Frank Lautenberg) offered an amendment (S.Amdt. 714) that would have banned the further production and distribution of 10-round or greater magazines, or LCAFDs. While it would grandfather in existing magazines, those magazines legally held by the public would become non-transferable and would essentially become contraband upon the owner's death, but it too was rejected by a yea-nay vote: 46-54 (Record Vote Number: 103).

Table 3. Expired and Proposed Definitions of Semiautomatic Assault Rifle Compared

Expired 1994-2004 Federal Definition for Semiautomatic Assault Rifle (a two features test)	Proposed Assault Weapons Ban of 2013 Definition for Semiautomatic Assault Rifle (a one feature test)
A semiautomatic rifle that had an ability to accept a detachable magazine and had at least two of the following: (1) a folding or telescoping stock; (2) a pistol grip that protruded conspicuously beneath the action of the weapon; (3) a bayonet mount; (4) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; or (5) a grenade launcher.	A semiautomatic rifle that has the capacity to accept a detachable magazine and any one of the following: (1) a pistol grip; (2) a forward grip; (3) a folding, telescoping, or detachable stock; (4) a grenade launcher or rocket launcher; (5) a barrel shroud; or (6) a threaded barrel. Also, any semiautomatic rifle that has a fixed magazine with the capacity to accept more than 10 rounds, except for an attached tubular device designed for and only capable of accepting .22 caliber rimfire ammunition.

Source: See expired 18 U.S.C. §921(a)(30)(B) and S. 150 and H.R. 437 as introduced in the 113th Congress.

[107] Ed O'Keefe and Philip Rucker, "Assault Weapons Ban Dropped from Gun Bill," *Washington Post*, March 20, 2013, p. A5.

Table 4. Expired and Proposed Definitions of Semiautomatic Assault Pistol Compared

Expired 1994-2004 Federal Definition for Semiautomatic Assault Pistol (a two features test)	Proposed Assault Weapons Ban of 2013 Definition for Semiautomatic Assault Pistol (a one feature test)
A semiautomatic pistol that has an ability to accept a detachable magazine and at least two of the following characteristics: (1) an ammunition magazine that attached to the pistol outside of the pistol grip; (2) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer; (3) a shroud that was attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned; (4) a manufactured weight of 50 ounces or more when the pistol is unloaded; or (5) it was a semiautomatic version of an automatic firearm.	A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following characteristics: (1) a threaded barrel; (2) a second pistol grip; (3) a barrel shroud; (4) the capacity to accept a detachable magazine at some location outside of the pistol grip; or (5) it was a semiautomatic version of an automatic firearm. Also, any semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

Source: See expired 18 U.S.C. §921(a)(30)(C) and S. 150 and H.R. 437 as introduced in the 113th Congress.

Table 5. Expired and Proposed Definitions of Semiautomatic Assault Shotgun Compared

Expired 1994-2004 Federal Definition for Semiautomatic Assault Shotgun (a two features test)	Proposed Assault Weapons Ban of 2013 Definition for Semiautomatic Assault Shotgun (a one feature test)
A semiautomatic shotgun that had at least two of the following: (1) a folding or telescoping stock; (2) a pistol grip that protruded conspicuously beneath the action of the weapon; (3) a fixed magazine capacity in excess of five rounds; or (4) an ability to accept a detachable magazine.	A semiautomatic shotgun that has one of the following: (1) a folding, telescoping stock, or detachable stock; or (2) a pistol grip; (3) a fixed magazine with the capacity to accept more than five rounds; (4) the ability to accept a detachable magazine; (5) a forward grip; or (6) a grenade launcher or rocket launcher. Also, any shotgun with a revolving cylinder.

Source: See expired 18 U.S.C. §921(a)(30)(C) and S. 150 and H.R. 437 as introduced in the 113th Congress.

Open and Concealed Carry

For the most part, federal law did not address open or concealed carry of firearms until 2004.[108] And yet, in recent Congresses, proposals have been offered that address the carrying of firearms on public lands, in either an open or concealed fashion, as well as the issue of interstate concealed carry reciprocity. For example, Congress passed the Law Enforcement Officers Safety Act of 2004 (P.L. 108-277). This law provides qualified active and retired law enforcement officers with interstate concealed firearms carry privileges. Although this law supersedes state level prohibitions on concealed carry that would otherwise apply to law enforcement officers, it does not override any federal laws. Nor does the law supersede or limit state laws that permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property or prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park.

In addition, the Credit CARD Act of 2009 (P.L. 111-24) includes a provision that allows private persons to carry firearms in national parks and wildlife refuges, as long as the open or concealed carry of such firearms is in compliance with state and local laws (effective February 22, 2010). Congress has also considered related proposals to (1) require agencies that manage federal public lands to facilitate access to and use of those lands for the purposes of recreational fishing, hunting, and shooting with certain exceptions set out in statute (e.g., national security, public safety, or resource conservation);[109] and (2) prohibit the Secretary of the Army from banning individuals from firearms possession, including an assembled or functional firearm, while traveling through or visiting water resources development projects (e.g., reservoirs at Corps-operated dams and inland waterways) managed by the Army Corps of Engineers.[110]

Congress, moreover, has considered other proposals, such as the amendment (S.Amdt. 719) to S. 649 offered by Senator Cornyn, which would have mandated an increased level of reciprocity among states that have laws that allow civilians to carry handguns in a concealed fashion.[111] However, under a unanimous consent agreement that required a 60-vote threshold for passage, the Senate rejected this amendment by a yea-nay vote: 57 - 43 (Record Vote Number: 100).

[108] For further information, see CRS Report R42099, *Federal Laws and Legislation on Carrying Concealed Firearms: An Overview*, by Vivian S. Chu.

[109] For further information, see CRS Report R42569, *Hunting, Fishing, and Recreational Shooting on Federal Lands: H.R. 4089 and Related Legislation*, coordinated by Kristina Alexander.

[110] For further information, see CRS Report R42602, *Firearms at Army Corps Water Resource Projects: Proposed Legislation and Issues for Congress*, by Nicole T. Carter.

[111] For historical context, in the 111th Congress, on July 22, 2009, the Senate considered an amendment (S.Amdt. 1618) offered by Senator John Thune to the FY2010 Defense Authorization Act (S. 1390) that arguably would have provided for national reciprocity between states regarding the concealed carry of firearms. By agreement, the amendment needed 60 votes to pass, but it was narrowly defeated by a recorded vote, 58-39. Senator Thune introduced a similar bill, the Respecting States Rights and Concealed Carry Reciprocity Act of 2009 (S. 845). In turn, the 112th Congress revisited the issue of concealed carry and national reciprocity. On October 25, 2011, the House Judiciary Committee ordered reported the National Right-to-Carry Reciprocity Act of 2011 (H.R. 822) by a vote (19-11) that was nearly split down party lines following several days of contentious markup. On November 10, 2011, the Judiciary Committee filed a report on H.R. 822 (H.Rept. 112-277). On November 16, 2011, the House considered and passed H.R. 822, amended, by a recorded vote: 272-154 (Roll no. 852).

As background, 38 states (most recently Wisconsin) have enacted "shall issue" concealed carry laws, meaning permits are issued to all eligible applicants.[112] Ten states have enacted more restrictive "may issue" laws, meaning state and/or local authorities have discretion whether to issue permits.[113] In those states, applicants usually must demonstrate a need to carry a concealed handgun to the authorities. At one end of the spectrum, Alaska, Arizona, Wyoming, and Vermont allow concealed carry without a permit.[114] At the other end, Illinois and the District of Columbia allow no concealed carry of firearms by civilians. With regard to interstate reciprocity, a handful of states have "recognition" statutes that recognize any state-issued concealed carry permit. Other states have "open" statutes that allow any resident of the United States, without regard to state residency, to apply for a concealed carry permit. Still other states have "hybrid" statutes that include elements of both the recognition and open statutes. Contiguous "shall issue" states often extend reciprocity to one another. However, some "shall issue" states have opted not to extend reciprocity to other "shall issue" states for a variety of reasons, even though they might have extended reciprocity to arguably more restrictive "may issue" states. The end result is a complicated array of state laws that arguably makes it challenging for an individual to discern his legal ability to carry a concealed firearm in another state.

Under the Cornyn amendment, if enacted, a permit holder from state A would be able to travel to state B with a concealed handgun as long as state B had a concealed carry law, no matter which type ("shall" or "may" issue). The permit holder from state A would be required to comply with all other laws in state B, with the exception of the laws governing eligibility for and issuance of concealed carry permits. Several issues could arise, however. First, the amendment makes no allowance for the difference between more permissive "shall issue" and more restrictive "may issue" state laws. Therefore, the amendment could be viewed as an imposition by "shall issue" states over "may issue" states. Depending upon the circumstances, the amendment could also be viewed as an imposition by some "shall issue" states over other "shall issue" states, according to differences in their respective concealed carry laws. For example, some "shall issue" states have good moral character clauses as part of their eligibility requirements, others do not. Some require "live fire" training prior to permit issuance, others do not. Some require a mental health evaluation, others do not. Several states issue permits to persons 18 years of age, while most states require applicants to be 21 years of age.

Also related to concealed carry, Senator John Barrasso offered an amendment (S.Amdt. 717) that would require the Attorney General to make a 5% reduction in Community Oriented Policy Services grants to state and local governments that release information on gun owners—particularly concealed carry permit holders. The amendment was adopted by a yea-nay vote: 67-30 (Record Vote Number: 104).

[112] Wisconsin's concealed carry permit went into effect on November 1, 2011. "Shall issue" states include Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

[113] Alabama and Connecticut are "may issue" states that are considered to be more permissive than other "may issue" states, including California, Delaware, Hawaii, Maryland, Massachusetts, New Jersey, New York, and Rhode Island.

[114] Alaska and Arizona issue permits to residents who seek to carry concealed firearms in other states that extend reciprocity to residents of Alaska.

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